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A. Ghosh

Laws of Compulsory Acquisition and Compensation in India

&

**The
Land Acquisition Act,
1894**

I of 1894

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SIXTH EDITION

by

SUNIL KUMAR GHOSH, M.A., B.L.

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SUNIL KUMAR GHOSH

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Dedicated

To

The Memory

Of

My late revered father

A. Ghosh, B.L.

Advocate

Author

Of

Commentaries on

The Provincial Insolvency Act

Law of Benami Transactions in India

The Law of Endowments (Hindu & Mahomedan)

with

All humility and reverence

The Rule of Law

“The Rule of Law is in great peril in India and if it fails, the fault will not be ascribed to politicians but to judges and lawyers. * * * The common man is critically watching the conduct of the judiciary. Hence members of the Bar and Bench must conduct themselves with dignity associated with their high office. Lawyers and judges shall not consider their calling just a profession. They must serve with dedication. * * * We are all worshippers in the temple of justice and it is our duty to protect democracy and create a better Socio-economic condition in India. * * * The judiciary must act as the watch-dog of liberty. * * * Individual freedom was not an end in itself, but a means to an end. It was the duty of the lawyers and judges to evolve a synthesis between the concept of fundamental rights and public good. * * * Judges are the servant of people and their glory lay in the confidence people reposed in them. * * * There was superstition that political freedom would solve all problems. That belief has been cured by “cruel experience”. The present superstition is that problems facing the country can be solved by enacting laws. So we go on making laws and think our day’s work is done. But without co-operation of public conscience laws are a ‘puny thing’. The conscience that every one must participate in the great democratic experiment, must be developed * * *”

—DR. P. B. GAJENDRAGADKAR

FOREWORD

FOR THE FIFTH EDITION

By Hon'ble Mr. Justice P. N. Mookerjee, M.A., LL.B.

I have much pleasure in writing this 'foreword' for this well known treatise (A. Ghosh's Laws of Compulsory Acquisition and Compensation). It was the work of a reputed lawyer of great learning and experience and all its previous editions have received wide circulation and have been of immense help to the Bench and the Bar alike. The last edition of the book however, was published as far back as 1951, and, as this branch of law has developed to a great extent since then and, particularly, in recent times, a fresh edition has become eminently desirable and almost a necessity. I am glad that that task of bringing out a new revised edition has been undertaken by the author's son with commendable success and he, by his hard labour and able researches has made the book up-to-date, after thorough revision, in all its details. I am quite sure that this young author, who has compiled the fresh edition with care and thoroughness will receive due recognition and his book will prove a welcome and invaluable addition to every lawyer's library. I commend the book to all concerned and I have every hope that it will give them full and entire satisfaction.

4th October 1966

P. N. MOOKERJEE

PREFACE TO THE SIXTH EDITION

The last edition of this book was published in 1967 long after the previous publication in 1951 made during the life-time of the author, my late father. It is again thoroughly revised and re-arranged with all up to date case-laws given at the footnotes. All questions relating to 'Public Purpose' are dealt with mainly at one place i. e., under S. 3 in Part I. All amendments of L. A. Act and relevant amendments of the Constitution to date are included in Appendices in Part I. In Part II there are 27 Central Acts including all old Defence of India Acts and allied Acts and Ordinances with commentaries and case-laws upto date given on request of the members of the Bar, in as much as, these are not easily available and as large number of cases are still pending in Courts. In Part-III relevant enactments of all States and numbering about 104 in all, are incorporated with commentaries and case-laws to date and including latest amendments. Part IV consists of Rules of many States. Part-V consists of summaries of 38 leading cases with notes which will prove very useful to readers. Part-VI consists of model petitions and notifications. A close reading will reveal many new discussions in new light with various suggestions on the subject.

Latest legal position in relation to acquisition and compensation.—In our last Editorial (5th Edition) we have described the development of the law of acquisition and compensation and the proverbial tug-of-war going on between the Government, the citizens and the judiciary, up to the famous Golaknath's case by which the Supreme Court declared by majority of 6 to 5 Judges that the Parliament has no right to abridge any of the fundamental rights described in Part III of the Constitution, (a).

Subsequently in a later case viz., *State of Gujarat v. Shantilal Mangaldas*, (b), it was held that not only adequacy of compensation but also the principles specified for determination of compensation will not be open to challenge unless they are irrelevant to the determination of compensation which was illusory or can in no sense be regarded as fair. And it also held that compensation may be given otherwise than in money. In the recent Bank Nationalisation case i. e., *Rustom Cavasjee Cooper v. Union of India*, (c), confirmed the same view but also held that compensation given in the form of Bonds on the face value of the amount determined and maturing after many years carrying a certain rate of interest, was not in compliance with Constitutional guarantee, because the market value of the Bonds was not approximately equal to the face value, with effect that the value of compensation itself was much lower.

Regarding justiciability, the Calcutta High Court in *Jatadhar v. State*, (d),

(a) *Golaknath v. State of Punjab*, A. I. R. 1967 S. C. 1943.

(b) *State of Gujarat v. Shantilal Mangaldas*, A. I. R. 1969, S. C. 634 : (1969), S. C. A. 461.

(c) *R. C. Cooper v. Union of India*, A. I. R. 1970 S. C. 564.

(d) *Jatadhar v. State of West Bengal*, A. I. R. 1970 C 1, 90.

held recently that the validity of the entire acquisition proceedings can be challenged on such grounds as that proceedings are colourable or are in fraud of statutory powers or because of the real object is to acquire lands for some 'private purpose'. Where a composite notification acquiring land is made and some of the purposes is found to be non-public purpose, the entire notification shall fail, (e). The satisfaction of the Government under S. 17(4) of the Act as to the urgency of the acquisition is a matter of subjective satisfaction, the question whether the land is waste or arable is an objective one and is justiciable, *Raja Anand v. State of U. P.* and *Abdul Jabbar v. State of W. B.* (f). The question as to how far the rights to property under clauses 19(1)(f) and restrictions under cl. (5) of Art. 19 of the Constitution are relevant for the purposes of acquisition under Art. 31(2), is agitating since *Kochuni's case*, (g), upto the recent *Bank Nationalisation case*, (h). Previously the Court held that while Cl. (1) of Art. 31 was to be read subject to Cl. (5) of Art. 19, Cl. (2) of Art. 31 was a self contained Code, *Sitabati Devi v. State of W. B.*, (i), and that law for acquisition and compensation should not be discriminatory, (j), (*P. Vajravelu's case*). But in the *Bank Nationalisation case* it was held that clause (5) and Art. 19(1)(f) and clauses (1) and (2) of Art. 31 are parts of a single pattern. If the acquisition is for a public purpose substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be presumed, but enquiry into reasonableness of the provisions will not be excluded. The view expressed in *Gopalan's case*, (k), was rejected. Following *Akadasi v. State of Orissa*, (r), it was held that the law which prohibited the named banks from carrying business was a necessary incident of the rights assumed by the Union and hence was not liable to be challenged under Art. 19(b)(ii) in so far as it affected to right to carry on business.

Recent legislations :—The Government again tried to bypass the courts by the Constitution (24th Amendment) Act, 1971, the Constitution (25th Amendment) Act (Bill No. 106 of 1971) and by the Constitution Amendment Act (Bill No. XVI) 1971, after the judgement in *Golaknath's case* had been made subject matter of good deal of public criticisms and propaganda. Although the Government itself admits in their Statements of Objects and Reasons of the last mentioned proposed Bill No. XVI of 1971 that "The difficulty created by the decision in *Golaknath's case* can not be solved by Parliamentary legislation including amendment of the Constitution. Even the Bill of the late Sri Nath Pai as reported by the Joint Select Committee is inadequate to meet the purpose. The difficulty can be resolved only by a rethinking by the Supreme Court itself either in a case or on a reference or

(e) *R. K. Agarwal v. State of W. B.*, A.I.R. 1965 S. C. 995.

(f) *Raja Anand v. State of U.P.*, A.I.R. 1967 S.C. 1081 ; *Abdul Jabbar v. State of West Bengal*, 71 C. W. N. 129, (A. I. R. 1964, S. C. 1217 followed).

(g) *K. K. Kochuni v. State of Madras*, A. I. R. 1960 S. C. 1080 ;

(h) *R. C. Cooper v. The Union of India*, A. I. R. 1970, S. C. 564.

(i) *Sitabati Devi v. State of West Bengal*, (1967) 2, S. C. R. 949.

(j) *P. Vajravelu v. Spl. Dy. Collector*, (1964) 2, S. C. J. 703 : A. I. R. 1965 S. C. 1017,

(k) *A. K. Gopalan's Case*, A. I. R. 1950, S. C. 27.

(l) *Akadasi v. State of Orissa*, A. I. R. 1963, S. C. 1047,

review." If that be so, why then this farce of so many amendments of the Constitution ? The above remedy was the only proper remedy suggested long ago.

In the Constitution (24th Amendment) Act 1971 Articles 13 and 368 were amended in direct violation of Supreme Court's judgement in Golaknath's case that prohibited alteration of any part of Part III of the Constitution.

In the Constitution (25th Amendment) Bill No. 106 of 1971 Articles 31 and 31B of the Constitution are sought to be amended *inter alia* by changing the word 'compensation' to 'amount', as if, this will enable the Government to acquire lands at a nominal price by depriving the owners of fair market price, and by taking away the protection afforded by Articles 14 and 19. Deprivation of single individual is no less a deprivation.

The Constitution Amendment Bill No. XVI of 1971 seeks to amend Art. 145 by providing *inter alia* that in a reference by the President under Art. 143 or in any other case wherein is involved the question of validity or otherwise of a law made by the Parliament by amending any provision of the Constitution, the Supreme Court shall have to decide in its full Court by majority of not less than two-thirds of the number of Judges present at hearing. All these are discussed in the Appendices to Part-I. Lack of confidence in the judiciary are expressed through all the above Amendment Acts and the proverbial tug-of-war goes on. The very idea of appropriating a citizen's property at a nominal price without paying him his due share, and the curtailing of the power of the President to protect the interest of the minority if necessary, or of the Courts on questions of amendments to the Constitution, may be man-made laws but they are clearly against the God-made law or the Cosmic Moral Order i. e., truth, justice, equity and good conscience.

Suggestions :—(1) It is said that it is almost impossible for the Government to find so much money required as compensation for acquisition. But we have seen that in the case of *State of Gujarat v. Shantilal*, A. I. R. 1969, S. C. 634, their Lordships of the Supreme Court held that compensation under the L. A. Act may also be paid in terms other than cash provided of course a specific provision is made for such giving of compensation, and provided also that if compensation is intended to be paid in terms of Bonds or G. P. Notes, their market value must be equal to the amount awarded on the date of the award, (*vide Rustom Cavasjee Cooper v. Union of India*, A. I. R. 1970, S. C. 564).

(2) The second proviso to Section 6(1) of the L. A. Act has caused a lot of complications and many acquisitions made on behalf of public institutions although for public purposes were declared void simply because no part of the money was paid directly out of public revenues by the Government but by those public institutions entirely through the Government treasury and Part-VII having not been complied with. So really there is no utility of this proviso so far as acquisition for public institutions for public purposes are concerned. So far as Companies are concerned, entire monies should come out of their funds and provisions of Part-VII of the Act must have to be complied with irrespective of question whether the purpose is primarily a

public purpose and secondarily for Company, because the existence of public purpose is always a condition precedent. The view given in Jhandulal's case, A. I. R. 1961, S. C. 343 to the effect that "as part of the compensation money having come out of public revenues, the acquisition there is not for a Company simpliciter and so procedure laid down in Part-VII is not applicable" has complicated the situation. In case of Companies also there may be some cases where Government may be required to pay monies either for its own requirement or for public benefit or in case of emergency. So it would be better either to take this question of 'source' of money out of the purview of the Act altogether by deleting the entire clause or at least the portion "or wholly or partly out of public revenues or some fund controlled or managed by a local authority" or alternatively investing the Collector or some other officer with the power of a 'local authority' by maintaining a fund out of Government revenues for the purpose, but retaining the compulsory application of Part-VII in case of company always.

(3) Over-growth of legislations is as great a nuisance as over-population. Innumerable State and Central Legislations laying down so many procedures for acquisitions and requisitions although principally similar, is nothing but a huge waste of time, labour and money. Inclusive type of definitions as suggested in the Law Commissions Report and Section 6 of the L. A. Act are wide and sufficient enough. A simple Gazette notification *bona fide* declaring any particular purpose a 'public purpose' under the L. A. Act should be enough so that proceedings laid down in the L. A. Act are applied uniformly. All states have no need of having a Land Acquisition Act each separately. An omnibus provision in the State Acts that the Central L. A. Act I of 1894 will apply with some modifications described would be sufficient. Principles and procedures should be uniform throughout India.

The latest legal position and suggestions are given above. Lastly, I must thank the publishers for their co-operation. Errors of omission and commission there must be, but I hope readers will kindly pardon them. Suggestions for improvement will be gratefully-accepted.

Calcutta

The 5th December, 1972

SUNIL KUMAR GHOSH

WRITING ON THE WALL

(Dialectics of land economics in relation to political revolution and the law of acquisition and compensation :—*This field of law is the one most closely connected with revolutions in many countries. An interesting study of the subject on the basis of historical materialistic dialectism, is made in the following article written by the Editor in June 1970 and published in a local journal in September 1970 at a time when violence and killings were the only known things in this part of the world. A summarised version is reproduced).*

Introduction :—The question of acquisition of movable or immovable properties of the citizens without paying any compensation to the owners, is not only principally a political question, but also a historical, economic and at the same time a legal one.

The Indian Revolution in 1942 forced the British to quit India and she gained her independence on 15th August, 1947 and the new Constitution was adopted that came into force on 26th January, 1950 declaring India a Sovereign Democratic Republic.

Since then gradually the inroad made by the leftist elements of the country in the political arena with fair success has posed the problem viz., whether acquisition of lands or other moveable or immovable properties of the citizens should be made without paying any compensation, as a step towards the Socialisation of the State.

The present feeling of a section of people is that the country should be socialised by nationalising all private properties without compensation by one sweep of legislation by the Central Government. There are also the extremists who do not believe in the possibility of such a legislation, but want to achieve this objective by a so-called bloody revolution, their inspiration coming from Russia and China, Marx and Mao. Actually land grabbings are taking place in many places causing a lot of troubles, besides agitation by peasants, students and factory workers have become constant features.

Revolution or mini-revolution ?—The present state of affair is neither a revolution nor a rebellion but a violent demonstration arising out of keen rivalry of power amongst the various political parties trying to reach the throne of power in a hurdle race, the path being beset with bombs and daggers, with exciting slogans based on various grievances sometimes real, and sometimes indirect, imaginary and unrelated with their agitations but mainly political. This is but one side of the picture. The other side comprising peace loving people, industrialists, middle class and lower middle class people, all classes of traders and shop keepers, big and small house or land-owners, professional men and men belonging to various religious cults etc., form a huge section and their opposition to lawlessness and violence, is by no means, a weak one. They do not like and support lawlessness, unlawful grabbings of private properties, wanton desecration of national glories and of throwing to the wind all moral values.

History of revolution and counter-revolution in other parts of the world :
 —Question is, is a revolution or whatever it might be, justified in a country where there is Parliamentary form of Government, and a democratic form of Constitution, however insufficient it is, is in existence ? The history of the world will show that revolution in a democratic State is almost a rarity, for the simple reason that power can be obtained through the votes of the people. The question is relevant for the reason that for the purpose of Revolution the cry of the leftist parties are “free land to the peasants”, “expropriate the expropriators”, “all power to the workers” etc., which are closely connected with the question of compensation.

In France the great French Revolution took place in 1789-93 to destroy despotic monarchism under Louis The XVI but thereafter there was chaos and it gave rise to a great Counter Revolutionary in Napolion who ultimately became Emperor of France only to bring disgrace to his own country because of greed for conquests.

In America, the war of Independence was fought to drive out the foreign rulers viz., the British. *In Russia, in 1917, the Russian Revolution started under great Lenin to destroy Czar which it did and then defeating small counter-revolutionary forces, established Socialism in the country, under Soviet Socialist Republic.

*China was a semi-colonial country under Manchu King, and was for long a playground of Western powers and which was freed of the monarchy and foreigners by revolution led by Dr. Sun Yat Sen and Peoples' Republic of China was established comprising large part of it in 1912 with its capital in Nanking destroying the monarchy. But on the death of Dr. Sun, the Communist Party of China rose and led by Mao-Tse-Tung by a long march turned most parts of China red. But then they found a counter-revolutionary in Chiang-Kai-Shek who fought the communists for ten years, but thereafter having been kidnapped by his own generals gave way to Mao-Tse-Tung particularly because there was impending Japanese attack, thus helping China to be united.

In Germany the 1918 Revolution led by the leftist parties mainly consisting of Social Democrats and the Communists ended the Kaiser regime and the German Republic came into existence. But party strifes for gaining power continued paralysing the country's economy and administration by various revolutionary groups and this gave rise to powerful counter-revolutionary in Hitler who crushed not only the leftists but almost all other groups by support of anti-communist forces in the country. Hitler won the General Election in 1933 and was made the Reichskanzeller under Von Hindenburg and thereafter he became the fascist dictator as head of the National Socialist Party briefly called the Nazi Party, throwing away short lived democracy. At the world War II Hitler wanted to be a conqueror like Napolion and waylaid many countries of Europe in company with Mussolini of Italy but

*Inside Asia—John Gunther.
 Glimpses of World History—J. Nehru,
 Inside Europe—John Gunther.

like Napolion he ended in disaster, bringing disgrace and virtual dependence to his country.

*In Italy the communist revolution accompanied by atrocities galore produced a counter-revolutionary in Mussolini when in 1922 Civil War broke out and he met violence with violence crushing the leftist forces and formed a Government under powerless King Victor Emanuel and established the Fascist regime under a so-called Constitution. During the World War II he collaborated with Hitler and met with equal disastrous defeat and thereafter a Republican State was established.

In Spain the monarchy under King Alfonso XIII had to abdicate by pressure of the Republicans who gained an election in 1931. But party strifes gained momentum that gave birth to a Civil War and General Franco as a Counter-revolutionary succeeded in the war and established himself as a dictator in 1937 as leader of the Phalangist Party, and he is still going strong.

Besides, Poland, Hungary, Yugoslavia, Greece, Bulgaria, Egypt etc., were all under monarchy and that these were removed by revolutions.

So it will be seen that practically in almost all countries revolutions were directed to destroy the monarchy or foreign rulers. The dialectics of history shows that the pattern followed is almost similar everywhere.

In last war Russia had a narrow escape and China also was not in a very happy situation particularly because of Japan.

In India the Revolution of 1942 forced the British to quit India which declared herself to be a Sovereign Democratic Republic on the basis of new Constitution that came into force on 26th January, 1950. Although the Congress Party was in power but rivalry and party factions grew up and now a so-called mini-revolution is started by the leftists who again is opposed by a mini-counter-revolution in sporadic fashion. Both seems to be premature with vast mass of people remaining almost neutral and the Government at Centre strong enough with military standing by loyally to the Constitution.

But if this lawlessness is allowed to grow farther then the situation would be very serious and very similar to those of Germany and Italy prior to second world war and we will not be surprised to see a third counter-revolutionary force rising under a dictator like Hitler, or Mussolini or Franco, crushing all the opposing forces, establishing law and order for a time but throwing away democracy to the wind and then culminate after several years in greater involvement, particularly with two watchful powers on the two sides of India threatening danger. So it is of utmost importance that democracy is saved and no new class of enemies are created by depriving citizens of their legitimate dues. We do not think that there is any real difficulty for the Government to make free gift of lands to the peasants and at the same time to pay compensation according to recent rulings of the Supreme Court, which gradually moves towards abolition of compensation as far as is possible under the present Constitution.

*Mussolini by Sir Charles Petrie, P. 55.

*John Gunther & J. Nehru.

Arguments for abolition of compensation :—Generally we find that three types of arguments are advanced for abolition of payment of compensation. These are mainly (1) Economic, (2) Political and (3) Legal.

***(1) Economic Grounds :—**(a) That the peasant class in general are very poor and exploited. Many of them are landless and are in chronic state of indebtedness and burdened with innumerable taxes and illegal dues with unemployment always hovering over their heads.

(b) Although they comprise the largest section of our population but they have no facilities for education, health and security and social equality and freedom.

(c) That fragmentation of land should be prevented, and brought under modern mechanised system by nationalising all lands.

(d) That nationalisation of all agricultural lands by paying compensation to the owners will require huge sums of money which it is not possible for the Government to pay etc.

Now, so far as the first three clauses above are concerned, there is no dispute. As regards the fourth (d) it may be true that a huge sum of money would be required, but that is no justification to deprive others of their legitimate dues. Why Peter should be robbed to pay Paul? Why not Government Treasury pay both Peter and Paul at the same time? While no one will object to lands being given freely to the peasants but everyone will agree that if thousands of crores of rupees could be found by taxation or otherwise for big development projects, Police and Defence etc., then surely another thousand of crores can also be found by Government mathematicians in similar manner and by curtailing, if necessary, other expenses.

Actually now the Zamindaries are being abolished in all the States in India with great facilities to the peasants, but on paying compensation to the owners in form of bonds or in instalments. In Bengal under the Land Reforms Act, 1956, landless cultivators such as bargadars, korfa, thica tenants etc., are properly protected making their right to cultivate in a land, heritable etc. The Landgrab movement has forestalled the eventual distribution of lands by the State Government to the landless.

***2. Political Grounds :—**(a) As a part of the fulfilment of the destiny of mankind as stated by Marx, the transformation of the Socio-economic condition of India is a historical remedy. Hence the abolition of landlordism and economic emancipation of the peasantry are forward steps towards the completion of Bourgeois Democratic Revolution in India.

(b) Communist States such as Russia and China have nationalised all private properties including lands. All the tillers are getting lands to cultivate lands in modern style with greater prosperity to the nation.

(c) In the past the agriculturists in India have been expropriated of their lands. On this account justice demands that the expropriators be expropriated. Those who have been dispossessed of their lands cannot be penalised again by buying the same lands from the expropriators.

*Dialectics of Land Economics of India by Dr. B. N. Dutta.

*Karpinsky : The Social and State Structure of USSR, p. 148.

(d) The peasant uprising will help to bring in full revolution for bringing in Communism in the country etc.

Now, so far as grounds (a), (b) and (d) are concerned, it is clear that the leftists are more concerned to gain power through a created peasant revolution, so as to bring in Communism in the country, to fall in line with Russia and China than real economic freedom for which there is enough scope in the Indian Constitution, to be attained by democratic process and as is being gradually done. All the agitations are after-effects of long standing corruptions, nepotism and mal-administration everywhere but they are more political in nature than meaning real economic upliftment. So far as ground (c) is concerned, it has got to be historically examined. To say that because I or my predecessor owned a particular property 50 or 5000 years ago and of which I am not now in possession, therefore I am entitled to regain it free, is something like an *argumentum ad baculum* i. e., argument of fists, not of logic. The statement that miseries of the peasants are causes of future revolution, is based on superficial observation. So the historical background of the claims that lands at one time belonged to the peasants since oldest times, requires an investigation.

Historical background of land ownership in India :—(i) Vedic Age :—The cultural history of India begins with the age of the Vedas. Of these the Rig Veda is the original source which depicts the Vedic Society then existing. They followed agricultural pursuit along with some trade or handicraft industries. The names of various kings are mentioned all over the book. The coronation ceremonies of Kings are also described wherein it was said to the Kings, "thou be the Lord of the land". In Bharat family we find that hereditary monarchy is suggested. Sense of private property was fully developed. It is sometimes also stated that peasants cultivated lands owned by them. Referring to the context it can only mean that the peasants held the lands under the Kings. Ancestral properties were heritable. So any kind of communism at this period is out of question and peasants were never the supreme owners of land. In Atharva-Veda also we find that settlement of lands were made with the consent of the King of his clan. In the Brahmana period of Vedic age the word—"Grama Kama" signifies that the King used to grant villages after which lands vested in the transferees. In Brihat-Parasara it is stated that the King used to realise taxes in cash or kind for lands granted. This was also the position in Post-Vedic age (Gautama Period).

(ii) *Buddhist Period* :—We gather from the Buddhist annals that the agriculturist is the proprietor of the field but his absolute right is curtailed by the village Committee. Tribal communism in the sense of Morgan never existed in Indo-Aryan society since the Rig-Vedic days. These writers who in the light of Morgan's theory as applied by Maine to India, seek such a stage of society in Indo-Aryan policy, misread history. We clearly see that everywhere a ruling class has arisen.

(iii) *Mauryan Age* :—"We get in the Mauryan period an absolute monarch who was the lord of every thing in the realm, the cultivator *pari passu* had to remain satisfied by getting a life tenure on the land he cultivated."

(iv) *Era of Feudalism* :—Bharasiva Royal dynasty in Central India in about 150 B. C., then Vakataka dynasty in Deccan in about 300 A. D., then Gupta period in 500 A. D., then era of Harshbardhana (600 A. D.) upto the third dynasty of Vijayanagara Empire (1600 A. D.) all lands belonged to the monarchs.

(v) *Muhammedan Age* :—In the thirteenth century North India was conquered by the Turks and Muslim rule began. The agricultural subjects had to pay a share of the gross produce of his land to the conquering rulers. In this wise the politico-economic relations between the new royal protector and the old revenue paying subject remained the same as ever. Then came Mughal period which finally established itself at the time of Akbar when everything belonged to the monarch.

(vi) *British Period* :—In 1757 A. D. the English East India Company with the help of fellow conspirators won the battle of Plassey and they put up a new Subedar in place of Sirajuddoula then ruling Mughal Subedar of Bengal, Behar and Orissa. Later in 1766 A. D. they obtained Dewany i. e., right of collecting taxes, from Mughal Emperor Shah Alam on condition of paying twenty six lakhs of rupees yearly, for ever. In this way the English Company got the civil and military administration of the said provinces as the agent of the Great Moghul but virtually becoming masters. In 1769 A. D. a temporary settlement of revenue rate was made with the Zamindars and landlords who looked to the cultivators for the means of meeting Government demands. In 1793 by Reg. II of 1793 the Government created the Permanent Settlement and transferred in perpetuity a vast quantity of land to a class of men known as Zamindars and the property in the soil was formally declared to be vested in them. This policy was extended to other provinces such as Madras, Mysore, Benares etc. The English law as applied in India assumes that all the soil belonged in absolute property to the sovereign and not to the Zaminders who were mere collectors. (*vide Justice Trevor in Weekly Reporter. Vol. III Act V. P. 29*).

In many regions the Ryotwari System prevailed where the peasant pays revenue direct to the Government and will occupy it so long as he pays the revenue. This shows he had got an occupancy right only. This continued with modifications up till Independence of India in 1947. Thereafter the Zamindari system was abolished in almost all the States including the Princes' States.

When this is the legal situation it is useless to argue that cultivators of to-day have got or ever had any sort of proprietary right over their lands. The utmost they have got is occupancy right since early Hindu days.

Conclusion :—We have shown that most of the leftist arguments are untenable excepting some of the economic arguments. Still it is better to see the Writing on the Wall and sacrifice something now instead of losing everything in future. It is also shown that leftist movement shall have to be met and democracy shall have to be saved. It is true that huge sum of money is required to enable the Government to pay compensation. But, in view of the legal position shown above, we do not think that at present the Government shall have to face great difficulty. Deprivation is the least desirable thing in a civilised society, creating more hatred and conflicts.

So let the Government pay compensation, in advantageous way as shown by the Courts and let them make free gift of lands to the peasants, as early as possible, subject of course to payment of revenue to the State.

It is not desirable to change the Fundamental Rights, because the Governments, along with it, policy may change. If every political party coming into power is allowed to do so, then woe only will betide the nation. If you rob me to-day I will rob you to-morrow and this will go on for ever. History repeats itself. It is not a sound policy to completely destroy a section of people by depriving them of their value of properties. Taxations there are galore, let there be few more taxations on rich, if necessary. Compensation can be given in bonds or in other kinds such as lands etc., keeping in mind the views of Courts. Independence of Judiciary shall have to be maintained at all costs. Further it is not a remote impossibility if Golak Nath's case is reversed by another Full Bench of Supreme Court. Majority of our people are suffering for want of work and money in utter poverty. There is no doubt that a Revolution is in the making although what now happens is a mini-revolution with mini-counter-revolution, both being premature and diverted more to hooliganism than towards real movements and which may be crushed, as, the general population with the Military and Police are still loyal to the Constitution.

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Unless, we all of us work sincerely and honestly with justice and patriotic feeling, this typhoon of the lawlessness shall not be checked permanently, and it will sweep away everything giving rise to a third counter-revolution under a ruthless dictator who may be either a left-winger or a right-winger killing democracy and along with it the hard-earned freedom altogether."

PREFACE TO THE THIRD EDITION

Since the last impress of this work the only changes that have been introduced by the Legislature are directed to the inclusion of "industrial concerns" into the definitions of "Company" and enabling Government to require land for them for the erection of dwelling houses for workmen employed by them or for the provision of amenities directly connected therewith. Beyond this nothing has been done to remove the many defects that clog the smooth working of the Act. The Act still lacks in any provision making it obligatory on the Collector to make references to Court under section 18 nor does it contain any remedial measures when the Collector abstains from making the reference. The absence of such provisions has given rise to a conflict of opinion among the different High Courts. Some of them following the principle of *Ubijusibi remedium* (no wrong without a remedy) have invoked the aid of the inherent power of the High Court to set matters right while others have held that the High Court has no power over the Collector to compel him to make the reference. In this confusion the valuable rights of many to claim just compensation for the compulsory acquisition of their lands have been and are being ignored.

The decision of the Privy Council in the case of *Rangoon Botataung Company v. The Collector of Rangoon* (39 I. A. 197) has, no doubt, led the Legislature to amend section 26 and make provision for appeals from awards of Court which are to be considered as decrees, but no provision has yet been made for appeal against orders of apportionment. Notwithstanding the decision of some of the High Courts that orders of apportionment are also to be considered as decrees, it is open to very great doubt whether appeals would lie from such orders to the High Court in the absence or any express provision to that effect in the Act itself and in view of the observation made by Lord Bramwell in *Sandback Charity Trustee v. The North Staffordshire Railway Company*. (1877) L. R. 3 Q. B. D. 1, that "an appeal does not exist in the nature of thing ; a right of appeal from any tribunal must be given by express enactment."

The amendment of clause *first* in sub-section (1) of section 23 by substitution of the word "*notification under section 4, sub-section (1)*" in place of the words "*declaration relating thereto under section 6*" has seriously affected the rights of persons interested in the lands acquired in respect of the compensation payable therefor. The provision in clause *first* of sub-section (1) of section 23, that in determining the amount of compensation the Court shall take into consideration the market-value of the land at the date of publication of the *notification under section 4, sub-section (1)* and the provision in clause *sixthly* of the same sub-section, that the court shall take into consideration the damage to the profits between the *publication of the declaration under section 6* and the Collector's taking possession of the land, can hardly be reconciled.

References have also been made in the commentaries to the numerous other anomalies in the Act which require the consideration of the Legislature for their removal.

The book has been thoroughly revised and case-laws have been brought up to date. The most important question, namely, ascertainment of the proper market-value of the property acquired, has been dealt with from all practical points of view. The Chapter on apportionment also contains all possible solutions of the many difficulties that often arise in the apportionment of the compensation. It is hoped that this edition will adequately meet the requirements of those for whom it is intended.

I cannot conclude without acknowledging my indebtedness to Messrs. Sudhindra Kumar Mitra, M.A., B.L. Advocate, and Sanat Kumar Ghosh, B.L., Pleader, for the valuable assistance rendered by them in the revision of this work.

CALCUTTA

The 17th December, 1934.

A. G.



INTRODUCTION

The Sovereign power of every State has authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction. This power is termed in the United States "eminent domain." But it is not deemed politic to exercise the authority so as to interfere with security in the enjoyment of private property, or to confiscate private property for public purposes without paying the owner its fair value. It is a well recognised canon of construction not to interpret an Act of the Legislature in such a way as to take away property without compensation unless such intention is clearly expressed or is to be inferred by plain implication. It is in exercise of this Sovereign power that private property is appropriated by the State for purposes of public utility and the appropriation by the Sovereign power of private property for purposes of public utility is known in different countries by different names. In England the law which provides for the protection of private interests where it is required to appropriate lands for public purposes has acquired the name of the "Law of Compensation." The law of Compensation there is contained in the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation (Amendment) Act, 1860, and the Lands Clauses Consolidation Act, 1869. Thereafter in 1919 the Acquisition of Land (Assessment of Compensation) Act 1919 was passed. Subsequently the Lands Tribunal Act 1949 was passed providing for new tribunals for assessment of compensation, the basis of compensation being as provided in the Town and Country Planning Act 1947. The said Act was amended in 1954 so that the Town and Country Planning Act, 1954, is the latest piece of legislation affecting laws relating to planning and compensation and compulsory acquisition in England.

The principle underlying appropriation by State of private property, is that the appropriation must be for "public utility" or "public purpose" as it is called in India. It rests upon the famous maxim *salus populi est suprema lex* which means that the welfare of the people, or of the public is the paramount law and also on the maxim *necessitas publica major est quam privata* which means, "public necessity is greater than private." "The law imposeth it on every subject that he prefer the urgent service of his Prince and Country before the safety of his life." And to interests of such paramount importance private interests may justly be subordinated. To check abuses, that is, to stop appropriation of private property for ulterior purposes, for purposes other than public utility, the above rules were made subject to the maxim *audi alteram partem*, that is, every subject has a right to be heard before he is deprived of his right to his property by the State.

Though the Sovereign power has the right to appropriate for purposes of public utility lands situate within the limits of its jurisdiction, it is not deemed politic to confiscate private property for public purposes *without paying the owner its fair value*. Hence the law of compensation is inseparably connected with the law of acquisition.

The law of acquisition of land in every civilised country have been based on the fundamental principles stated above and machineries have been provided for carrying out and giving effect to the above principles. The law in India until 1923, did not contain any provision for consulting the wishes of the people whose lands were compulsorily acquired, nor have they, even now, any authority to decide the question whether the purpose for which their lands are acquired is a public purpose. According to the law, as it is, there no definition of a "public purpose" nor any limitation regarding what is likely to prove useful to the public—both matters being left to the sole and absolute discretion of the Government. It is not competent for any Court to assume to itself the jurisdiction to impose restrictions on this absolute discretion. The Government is the sole authority for deciding what a "public purpose" is and none has any jurisdiction to enquire into the question whether the purpose for which land, in respect of which a declaration has been made, is a public purpose or not, although it is doubtful how long this sort of oligarchic laws will hold good, these being in violation of several fundamental rights.

The earliest codified law on the subject in India was Bengal Regulation I of 1824 which was in force till 1850, when it was repealed by Act I of 1850. The Act I of 1850 was again repealed by Act VI of 1857 which was in force till 1863 when Act XXII of 1863 was passed. In the year 1870, Act X of 1870 was passed repealing Act XXII of 1863, and Act X of 1870 was in force until the year 1894 when the present Act I of 1894 was passed. The law of acquisition is, in its main principles, contained in the Land Acquisition Act I of 1894 as amended by the Repealing and Amending Acts, X of 1914, XVII of 1919, XXXVIII of 1920, XIX of 1921, XXXVIII of 1923, XVI of 1933, Repealing Act I of 1938 and the Land Acquisition (Amendment) Act, No. 31 of 1962. All these Acts are to be construed as forming parts of the same Act.

The preamble of the Land Acquisition Act I of 1894, explain the reason which led to its enactment—"For the *acquisition* of land needed for public purposes and for Companies and for *determining* the amount of compensation to be made on account of such acquisition." The word "acquisition" as used in the Land Acquisition Act includes the purpose for which the land is taken as well as the actual taking. The object and intention of the Land Acquisition Act, I of 1894, is to provide a speedy method of determining the compensation to be paid for land required for certain defined purposes and the Act points out the mode in which the same is to be acquired, and the formalities necessary to be followed for acquiring the same. The Act contains abundant evidence of the intention of the Legislature that all proceedings in regard to land acquisition and compensation should be conducted under the Act, and not otherwise. What has to be acquired in every case is the aggregate of rights in the land and not merely some subsidiary rights as that of a tenant. The Court must proceed on the assumption that it is the particular piece of land in question that has to be valued including *all interests in it*. Reading this Act as a whole one can come to no other conclusion than that it contemplates the award of compensation in this way : *first*, you ascertain the market-value of the land on the footing

that all separate interests combine to sell, and then you apportion or distribute that sum among the various persons found to be interested.

With regard to the value to the land taken under Act I of 1894, and the enquiry directed by the Act, the duty of the Collector under the section relating thereto is to fix the sum which, in his best judgement, is the value. His proceedings are administrative and not judicial, and his award, though conclusive against Government, is subject to the land-owner's right to have the matter referred to the Court, whose jurisdiction in the matter is exclusive and cannot concurrently be exercised by the Civil Court. It should be remembered that exact valuation is practically impossible, the approximate market value is all that can be arrived at. Compensation payable for land acquired by Government cannot be ascertained with mathematical accuracy and the Act provides only matters to be considered and neglected by Court in determining compensation.

No fixed principle has been or can be laid down regarding the apportionment of compensation allowed by Government. Every case must depend upon its own circumstances, on the evidence given and the nature of the property. The number of years' purchase which it would be right to allow with regard to one sort of property might not be a fair allowance for other sort of property. Where land which is taken under the Land Acquisition Act belongs to two or more persons the nature of whose interest therein differs, the compensation allotted therefore must be apportioned according to the value of the interest of each person having rights therein as far as such value can be ascertained. The determination of the question, who are the persons to whom the amount of compensation awarded for acquisition of land is payable, depends upon the ascertainment of the rights and interests of the several claimants to the property at the time of its acquisition.

In the meantime there have been the great World War II and great upheavals all over the world. The most important of them, so far as India was concerned was the passing of the Indian Independence Act 1947, by which India was divided into two dominions, Dominion of India and Dominion of Pakistan and it was provided that on and from 15th day of August 1947, His Majesty's government in the United Kingdom loses responsibility as regards Government of any territories which, immediately before that day, were included in British India and as regards laws it was declared that "save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof, existing immediately before the appointed day shall, so far as applicable and with the necessary adaptation, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having powers in that behalf."

By the Constituent Assembly set up under the said Act, for making provision as to the Constitution of the Dominion of India, the Constitution of India was framed which came into force on 26th January 1950, which *inter alia* provided that "Notwithstanding repeal by the Constitution of the enactments referred to in article 395 (viz. The Indian Independence Act, 1947 and the Government of India Act, 1935, but not including the

Abolition of Privy Council Jurisdiction Act, 1949) but subject to the other provisions of the Constitution all the laws in force in the territory of India immediately before the commencement of the Constitution 'shall continue in force therein untill altered or repealed or amended by a competent Legislature or other competent authority' and for the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President by Order may make such Adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provided that the law shall, as from such date as may be specified in the Order, have effect subject to the adaptations and modifications so made, and any such Adaptation or modification shall not be questioned in any court of law.

In pursuance of the above provision of the Indian Independence Act, 1947, and the Constitution of India, the Land Acquisition Act, 1894 which was in force in India at the time of the Indian Independence Act, 1947, continues still to be in force in Indian Union subject to the adaptations made by the (1) Indian Independence (Adaptations of Central Acts and Ordinances) Order, 1948, (2) Government of India (Adaptation of Indian Laws) Order, 1937 and (3) Adaptation of Laws Order, 1950 issued under the Constitution of India. It will, therefore, appear that the L. A. Act now in force, is not the same as but very different from the Act in force in 1947 and the said Act as adapted and modified by the several adaptation of laws orders, as reproduced in the following pages form the subject of our present discussion. The adaptation of Laws Order, 1950 as issued under the Constitution of India by which the Act was last amended is produced *in extenso* to indicate the adaptations made by the same.

Thereafter the Law Commission of India under the chairmanship of Sri M. C. Setalvad the then Attorney-General of India had also examined the matter of acquisition and have published a report (Report No. X dated 26.9.1958) giving a good survey of the legislative history of Land Acquisition from the earliest times till the present day in respect of acquisition and requisition and wherein a scheme for revision and consolidation of the entire law was envisaged in a Draft Bill. Thereafter in 1968 another Parliamentary Committee known as Mulla Committee was appointed to go into various questions raised under the Act.

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PART I

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S. 23 AMENDED	Act 38 of 1923, s. 7 and A.O. 1950.
S. 24 AMENDED	Act 38 of 1923, s. 8.
S. 26 AMENDED	Act 19 of 1921, s. 2.
Ss. 31, 35 and 36 AMENDED	{ Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.

S. 38 AMENDED	..	..	{ Act 38 of 1920, s. 2 and Sch. 1. Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.
S. 38A INSERTED	..	..	Act 16 of 1933, s. 2.
S. 39 AMENDED	..	..	{ Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.
S. 40 AMENDED	..	..	{ Act 38 of 1923, s. 9. Act 16 of 1933, s. 3 and Act 31 of 1962 ; Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.
S. 41 AMENDED	..	..	{ Act 38 of 1920, s. 2 and Sch. I ; Act 38 of 1923, s. 10 ; Act 16 of 1933, s. 4 ; Government of India (Adaptation of Indian Laws) Order, 1937 and 1950 and Act 31 of 1962.
S. 42 AMENDED	..	..	{ Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.
S. 43 AMENDED	..	..	{ Government of India (Adaptation of Indian Laws) Order, 1937. Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
S. 44(A) and 44(B) INSERTED	..	..	Act 31 of 1962
S. 49 AMENDED	..	..	{ Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.
S. 54 SUBSTITUTED	..	..	Act 19 of 1921, s. 3 and A. O. 1950.
S. 55 AMENDED	{ Act 4 of 1914, s. 2 and Sch. Pt. I ; Act 38 of 1920, s. 2 and Sch. I ; Government of India (Adaptation of Indian Laws) Order, 1937 and 1950. Act 31 of 1962.

PART I
THE LAND ACQUISITION ACT, I OF 1894

As Amended up to date.

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PART I

THE LAND ACQUISITION ACT

ACT I OF 1894

An Act to amend the Law for the Acquisition of Land for Public purpose and for Companies

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition ;

It is hereby enacted as follows :

¹NOTES

The Preamble of Act X of 1870 ran as follows :—"WHEREAS it is expedient to *consolidate* and amend the law for the acquisition of land needed for public purpose and for companies, and for determining the amount of compensation to be made on account of such acquisition ; It is hereby enacted as follows" :

For giving a preliminary idea of the Act it may be stated that the Land Acquisition Act 1 of 1894 provides in general the following classes of acquisition *viz.* :

1. For public purpose. S. 6.
2. For Industrial concern not being a company. S. 38A.
3. For Companies for erection of dwelling houses etc., for workmen. S. 40(1)(a).
4. For companies engaged in work for public purposes. S. 40(1)(aa).
5. For companies for some work which is to prove useful to public. S. 40(1)(b).
6. For public purpose primarily and on behalf of a company. S. 6 & S. 40.
7. For Railway or other companies with which the appropriate Government is bound by agreement to provide land. S. 43.

Art. 31 of the Constitution prohibits compulsory acquisition for anything except public purpose. Since the first legislation on acquisition *viz.* : Regulation 1 of 1824 of the Bengal Code till the present law including the Government of India Act 1935, S. 299 and the Constitution of India, the

¹ For Statement of Objects and Reasons see Gazette of India, 1892 Part V, p. 32, for Report of the Select Committee, see *ibid.* 1894 Pt. V, p. 23 ; and for proceedings in Council, see *ibid.* 1892, Pt. VI, p. 25 and *ibid.* 1894, pp. 19, 24 to 42.

fundamental principle that acquisition even if it be for a company, must have to be also for a public purpose, is always followed (a).

Regarding item No. (1) above whichever purpose is beneficial or useful to even a section of public, is public purpose (b).

Regarding item No. (2) above when small concerns having less than one hundred workmen require land for housing workmen, is a public purpose.

Regarding item No. (3) above erection of dwelling houses for workmen of a company or for providing amenities connected therewith, was ordinarily not a public purpose as generally understood, because all companies really work for gain sometimes, disregarding public inconveniences and sometimes on exploitation of workers and public, but these are deemed to be for public purpose (c) on the ground that it is an 'existing' law within the meaning of Art. 31(5) of the Constitution and so not affected by Art. 31(2) of the Constitution (d). The courts could have held that no public purpose is necessary under S. 40(1)(a) but still perhaps by way of abundant caution declared that S. 40(1)(a) or in other words, 'erection of dwelling houses for workmen' is a public purpose. In many quarters it is suggested on the above basis as also on the authority of *Santiniketan Co-operative v. Madhavlal* that acquisition for a company need not be for 'public purpose' (e). This is entirely wrong. The *Santiniketan* case is not an authority for the above proposition, as, this point, although an issue, was not decided. The only question that was decided was whether the abovenamed society was a 'Company' within the meaning of this Act. There cannot be any acquisition for a company without there being some public utility, the difficulty felt in S. 40(1)(a) having been removed in *Babu Barkya Thakur's case* (f). Detailed discussions are given in proper places.

Regarding item Nos. (4) & (5) above, although good deal of confusion prevails as to what exactly are public purposes, as it is not defined in the Act, still, in general it has been held that if the work of the 'constructions' are found to be of some benefit to even a section of the public, it will be a public purpose.

Regarding item No. (6) above, the object of the Act is therefore to empower the Government to acquire land only for public purposes or for a company the purpose of which is relatable to public. Where it is only for a public purpose the provisions of Part VII of the Act is not applicable and the compensation shall be wholly or partly paid by the Government from public revenue. But when it is primarily for a company, money must be paid by the company. But there may be another type of case where primarily the land was acquired for a public purpose though on behalf of a company and the compensation was paid partly by the Government, it was held that

(a) *State of Gujarat v. Shantilal*, A. I. R. 1969, S. C. 634.

(b) *Somawanti v. State of Punjab*, 1963 (1) S. C. A. 548.

(c) *Babu Barkya Thakur v. State of Bombay*, A. I. R. 1960 S. C. 1203.

(d) *Lilavati Bai v. State of Bombay*, 1957 S. C. R. 721.

(e) *Santiniketan Co-operative v. Madhavlal*, 60 B. 125 : 37 Bom. L. R. 955.

(f) *Babu Barkya Thakur v. State of Bombay*, A. I. R. 1960 S. C. 1203 ; *R. L. Aurora v. State of U. P.*, 1962 (1) S. C. A. 182.

Part VII of the Act is not applicable (g). By virtue of Part VII the company is to enter into an agreement with the Government showing public utility amongst others.

Regarding item No. (7) above—for various public utility concerns such as Railways, Electric Supply or Water Supply Corporation etc., the Government is bound by agreement to provide lands.

Although the Act is protected as an 'existing law' under Art. 31(5) of the Constitution, the Act itself stipulates public purposes under Sections 4, 5A, 6 and 40, even for companies read with Art. 31(2) of the Constitution.

PART I

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Land Acquisition Act, 1894 ;
- (2) It extends to the whole of India except ¹[the territories which, immediately before the 1st November, 1956, were comprised in Part B States] ; and
- (3) It shall come into force on the first day of March, 1894.

State Amendments

1. **Guzarat.**—By the *Land Acquisition (Guzarat Unification and Amendment) Act 20 of 1965*.
(See under Part III, Chapter IV-B, Guzarat).
2. **Maharashtra.**—By the *Land Acquisition (Maharashtra Extension and Amendment) Act 38 of 1964*.
(See under Part III, Chapter IV-A, Maharashtra).
3. **Mysore.**—By the *Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961*.
(See under Part III, Chapter X, Mysore).
4. **Andhra Pradesh.**—By the *Land Acquisition (Andhra Pradesh Extension and Amendment) Act XX of 1959*.
(See under Part III, Chapter I, Andhra Pradesh).

(g) *Jhandulal v. State of Punjab*, A. I. R. 1961 S. C. 343 ; *Radharaman v. State of U. P.*, A. I. R. 1954 All. 700 ; *Gurudas Saha v. L. A. Collector*, A. I. R. 1957 Cal. 495 ; *State of Bihar v. Kameswar Singh*, 1952 S. C. R. 889 ; *Raja Suryopal Singh v. State of U. P.*, 1952, S. C. R. 1056.

² These words were substituted for the words "The whole of British India" by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, were again substituted by Adaptation of Laws (No. 2) Order, 1950 for Part B States.

NOTES

Sec. 1 of Act X of 1870, ran as follows :—

1. This Act may be called "The Land Acquisition Act, 1870. "It extends to the whole of British India ; and it shall come into force on the first day of June 1870."

Basis of State Amendments.—The authority of the States to legislate on acquisition and requisition is derived from Article 31 of the Constitution read with item No. 42 of the Concurrent List III. The previous items Nos. 33 of List I and 36 of List II authorising the Centre and the State to legislate for acquisition and compensation are deleted and substituted by entry 42 of List III by Constitution (Seventh Amendment) Act 1956, S. 26.

Reading these together it appears that neither the Centre nor the States have any power to legislate in respect of compulsory acquisition for private purposes (h).

State Amendments of Land Acquisition Act

This Act has been amended in its application to.—

- (1) Andhra Pradesh by Andhra Act, 20 of 1959.
- (2) Assam by Assam Land (Requisition and Acquisition) Act, No. XV of 1964.
- (3) Bihar by Bihar Acts 8 of 1946, 23 of 1948, 17 of 1951, 35 of 1951, 21 and 34 of 1956 and Act 11 of 1961.
- (4) Bombay by Bombay Acts 18 of 1938, 20 of 1945, 4 and 10 of 1948, 35 of 1949, 27 of 1950, 2 and 35 of 1953, 12 and 24 of 1958 and 17 of 1960.
- (5) Delhi by Delhi Development Act, 61 of 1957.
- (6) Gujarat by Gujarat Act 46 of 1961, 1 of 1966.
- (7) Jammu and Kashmir by the State (J. & K.) Land Acquisition Act 21 of 1962.
- (8) Kerala by Kerala Land Acquisition Act, 21 of 1962.
- (9) Maharashtra by Maharastra Act, 38 of 1964.
- (10) Madhya Pradesh by C. P. & Berar Acts 27 of 1939, 7 of 1949, 20 and 28 of 1949. M. P. Acts 3 of 1950, 21 of 1958 and 5 of 1959, 11 of 1967.
- (11) Madras by Madras Acts 21 of 1948, 12 of 1953 and 23 of 1961.
- (12) Madras city (locally) and its neighbourhood by Madras Acts 16 of 1945 and 37 of 1950.
- (13) Mysore by Land Acquisition (Mysore Extension and Amendment) Act No. 17 of 1961.
- (14) Orissa by Orissa Acts 19 of 1948 and 19 of 1959, 6 of 1962.
- (15) Punjab by East Punjab Act 15 of 1948, Punjab Acts 2 of 1954, 17 of 1956 and 47 of 1956.
- (16) Kanpur area (locally) by U. P. Act 6 of 1945.

(h) *State of West Bengal v. Bela Banerjee*, 55 C. W. N. 775 : (1954) S. C. R. 558 ; 1954 S. C. A. 41.

- (17) Rajasthan by Rajasthan Land Acquisition Act, 24 of 1953.
- (18) Uttar Pradesh by U. P. Acts 10 of 1945, 22 of 1954, 17 of 1956 and 47 of 1956.
- (19) West Bengal by Bengal Act 2 of 1934 and W. B. Acts 30 of 1963 and 24 of 1964.

Besides there are lots of special or local laws.

The Laws of compulsory acquisition and compensation and the Government.—Acquisition of land may be by purchase either by agreement or otherwise than by agreement. The sovereign power of every State has authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction and “the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive owners of their property without adequate compensation unless the intention to do so is made quite clear. Where property has been compulsorily acquired by the government or a public body and possession taken by it, it must pay not only compensation but also interest on the amount awarded as compensation from the date of taking such possession” (i). The right to compensation where land is taken compulsorily, extends even to a right against the Crown (j). In that case the Crown during the war purporting to act under the Defence of the Realm Regulation took possession of an hotel for the purpose of housing the headquarter’s personnel of the Royal Flying Corps. and denied the legal right of the owners to compensation. It was held that the Crown is not entitled as of right either by virtue of its prerogation or under any statute, to take in possession of the land or buildings of a subject for administrative purpose in connection with the defence of the realm without paying compensation for their use and occupation. Lord Atkinson, referring to the lands having been taken by the Crown or its officers for the defence of the realm, said : “the conclusion, as I understand it, is this : that it does not appear that the Crown has ever taken for those purposes the land of the subject without paying for it, and there is no trace of the Crown having ever in the time of the Stuarts exercised or asserted the power or right to do so by virtue of the Royal Prerogative”. He also added that he concurred with the conclusion at which Lord Lindley arrived in *Wheaton v. Maple* (k), as to the purpose, object and effect of the body of legislation passed from 1708-1798 enabling land, or the use of it, to be compulsorily acquired by the Crown on the terms of the owner being paid for it.

The Laws of Acquisition in England.—It was found early in last century that it was quite impossible for railways, water-works, and other work for the benefit of the public to be carried out, unless the promoters were given special powers of acquiring the necessary land. A very large number of private Acts were passed, each containing lengthy provisions for the acquisition of land. A Parliamentary Committee sat on the question in 1844;

(i) *The Inglewood Pulp and Paper Company v. The New Brunswick Electric Power Commission*, 28 L. W. 753 (P. C.) ; 111 I. C. 261 ; 1928 A. I. R. 287 (P. C.).

(j) *Attorney-General v. De Keyser’s Royal Hotel Ltd.*, (1920) A. C. 508.

(k) *Wheaton v. Maple*, (1893) 3 Ch. 48.

with the result that in 1845 the Lands Clauses Consolidation Act was passed, to consolidate in one Act the provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same. This Act forms the basis of compensation law.—*Webb's Valuation of Real Property*. In all cases where it is desired to acquire land compulsorily the authority of some Act of Parliament must be shown, and owing to the passing of the Acquisition of Land Act 1919, it becomes necessary to divide the cases where land is compulsorily acquired, into two classes : (1) where land is acquired by a statutory company or body or persons carrying on business for profit or gain, such as a railway, gas or water company ; (2) where land is acquired compulsorily by a Government department or a local or public authority.—*Gordon*.

The Laws of Acquisition in India before 1870.—The principal enactment that were passed for enabling the officers of Government to obtain at a fair valuation, land or other immovable property required for roads, canals and other public purposes were : (1) Bengal Regulation 1 of 1824 ; (2) Act I of 1850 ; (3) Act VI of 1857 ; (4) Act II of 1861 ; (5) Act XXII of 1863 ; (6) Act X of 1870 ; besides many other local enactments *e. g.*, (1) Act XXVIII of 1839 (Bombay) ; (2) Act XVII of 1850 (Bombay) ; (3) Act XLII of 1850 (Bengal) ; (4) Act XX of 1852 (Madras) ; Act I of 1854 (Madras). Before Act X of 1870, the valuation of lands which was found necessary to be taken up for the execution of the public works, was entirely in the hands of arbitrators, from whose decision there was no appeal. This system led to a lamentable waste of the public money, both because the arbitrators were incompetent, and sometimes it is to be feared, corrupt and also because the law, as it then stood, laid down no instruction for their guidance in the performance of their duties.—*Statement of Objects and Reasons*.

Act X of 1870.—This (*i.e.*, the above) latter defect among others was remedied by Act X of 1870. The Act of 1870 provided for the abolition of the system under which uncontrolled discretion was entrusted to the arbitrators and in view thereof required the Collector, when unable to come to terms with the persons interested in land which was desired to be taken up, to refer the difference for the decision of a civil court, usually that of the District Judge. In the disposal of such references the Court was aided by assessors and its finding was final if the judge and one or more of the assessors agreed. If, however, the Judge and the assessors disagreed, an appeal was allowed which usually lay to the High Court.—*Statement of Objects and Reasons*.

Act I of 1894.—“The Act of 1870 has not, in practice, been found entirely effective for the protection either of the persons interested in lands taken up or of the public purpose. The requirement that the Collector shall refer for the decision of the Court every petty differences of opinion as to value, and any case in which any one perhaps of a large number of persons fails to attend before him, has involved in litigation, with all its trouble and delay and expense, a great number of persons whose interest in the land was extremely insignificant. It has, in fact, frequently been the case that the owners of small

pieces of land have had to pay court costs to an amount far exceeding the value of the land itself".

"On the other hand, the provisions of the Act as to the incidents of costs, the whole of which fall on the Collector if the final award is ever so little in excess of his tender, are such as to encourage extravagant and speculative claims. The chance of altogether escaping the payment of costs is so great, that claimants are in the position of risking very little to gain very much, and have therefore, every motive to refuse even liberal offers made by the Collector and to try their luck by compelling the reference to the Court. Much of the same may be said of the provisions of the existing law regarding the payment of interest. No matter how fair the original offer of the Collector and how groundless the refusal to accept the compensation he has tendered is, interest is payable on the amount of the award finally arrived from the date of the Collector's taking possession of the land. This may not be for a period of two or three years, and, as interest continues to run until the litigation is finally completed, it is to the advantage of the landowner to protract the proceeding to the utmost. All this costs a very heavy and undeserved burden on the public purse".

"It is proposed, therefore, to amend the law by making the Collector's award final, unless altered by the decree in a regular suit. Persons interested in land taken up for public works will thus still have the opportunity if they desire it, of referring to an authority quite independent of the Collector, their claims to more substantial compensation than the Collector has awarded; and will in all cases have a further right of appeal to the regular appellate Courts. They will no longer, however be encouraged to litigate by the feeling that they can hardly lose but might make a great gain by doing so."

"This change in the procedure for determining the valuation of land taken up for Public Works will also render it possible to dispense with the services of the assessors who are now supposed to assist the Courts. Considering the difficulty, almost throughout the country of obtaining the services of such assessors as are really qualified to form a sound opinion on the subject of the valuation of land, it is believed that the proposal to dispense with them and to leave the matter to the sole arbitrament, first of the Collector and then of the Judge, will in no way diminish the efficiency of the Court in enquiries in which the value of land is in issue. It will certainly tend to shorten litigation and to diminish its expense".

"Several minor amendments in the law which experience has shown to be desirable are included in the Bill."—*Statement of Objects and Reasons.*

For several years past the amendment of the Land Acquisition Act, 1870, had been under consideration by the Government of India in communication with Local Governments. On the 17th March, 1892, Bill No. 6 of 1892 was introduced in India Council to amend Act X of 1870. The Bill was referred to a Select Committee who made their first report dated the 2nd February 1883 and a further (and final) report dated the 23rd March 1893, and a third report dated the 25th January 1894. Act X of 1870 was thereafter replaced by Act I of 1894, which received the assent of the Governor-General

of India-in-Council and came into force on the 1st day of March 1894*.

Amendments of Act 1 of 1894. List of Amending Acts and Adaptation Orders :—

Various Amending Acts have been passed from time to time to amend the provisions of Act I of 1894. The Amending Acts are :—

- (1) The Indian Electricity Act, 9 of 1910.
- (2) The Decentralisation Act, 4 of 1914.
- (3) The Repealing and Amending Act, 10 of 1914.
- (4) The Land Acquisition (Amendment) Act, 17 of 1919.
- (5) The Devolution Act, 38 of 1920.
- (6) The Land Acquisition (Amendment) Act, 19 of 1921.
- (7) The Land Acquisition (Amendment) Act, 38 of 1923.
- (8) The Land Acquisition (Amendment) Act, 16 of 1933.
- (9) The Government of India (Adaptation of Indian Laws) Order, 1937.
- (10) The Repealing Act, 1938 (I of 1938).
- (11) The Indian Independence (Adaptation of Central and Ordinances) Order, 1948.
- (12) The Adaptation of Laws Order, 1950.
- (13) The State Acquisition of Lands for Union Purposes (Validation) Act, 1954 (23 of 1954).
- (14) The Adaptation of Laws (No. 2) Order, 1956.
- (15) The Land Acquisition (Amendment) Ordinance 1962 (3 of 1962).
- (16) The Land Acquisition (Amendment) Act, 31 of 1962.
- (17) The Land Acquisition (Amendment) and Validation Act, 13 of 1967.

The amendments made by the above Acts are dealt with and discussed in the notes to the various sections amended.

Nature and Object of the Act.—The Land Acquisition Act I of 1894 is of an exceptional character. It aims at promoting important public interest ; *salus populi suprema lex*. And to interests of such paramount importance, private interests may justly be subordinated. And it has been recognised that in interpreting the intention of the legislature in statutes of that character, a construction necessary to effectuate that intention must be given effect to, (1). The object and intention of the Land Acquisition Act, I of 1894 is to provide a speedy method of determining the compensation to be paid for land required for certain defined purposes and the Act points out the mode in which the same is to be acquired, and the formalities necessary to be followed for acquiring the same. The object of the Act is also to comprise in one General Act sundry and elaborate provisions relative to the acquisition of land for public purpose and for determining or assessing the amount of

*For Statement of Objects and Reasons, see Gazette of India, 1892, Part V, p. 32 ; for report of the Select Committee, see *ibid*, 1894, Part V, p. 23 ; and for Proceedings in Council, see *ibid*, 1892, Part VI, p. 25, and *Ibid*, 1794, pp. 19, 24 to 42.

(1) *Shivram Udaram v. Kondiba Muktaji*, 8 B, 340 ; *Shamlal v. Hirachand*, 10 B, 367 ; *Balvant Ram Chandra v. Secretary of State*, 29 B, 480 (505).

compensation and it is for avoiding the necessity of repeating such provisions in subsequent Acts dealing with such acquisitions or similar acquisitions as well as for ensuring uniformity of the provisions that the sections of the Land Acquisition Act are introduced in subsequent Acts by employing incorporating words of legislation in the subsequent Acts, (m). All provisions of Land Acquisition Act have been incorporated in West Bengal Act XXI of 1948 i.e., West Bengal Land Development and Planning Act 1948, save to the extent they are expressly varied or excepted by such Act. The Act contains abundant evidence of the intention of the legislature that all proceedings in regard to land acquisition and compensation should be conducted under the Act and not otherwise (n). It is an Act authorising the local Government to make compulsory acquisition of land for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition. Where it is for a company, the acquisition is subject to the provisions of Part VII (o). In making the acquisition the wishes of the owners were originally wholly irrelevant but has now been made relevant by Act XXXVIII of 1923. Though it did not originally contain any provision for any objection on the part of the owners to the acquisition itself the defect has been remedied by the Land Acquisition (Amendment) Act XXXVIII of 1923. At first all his objections were limited to the amount of compensation and matters connected therewith, as was observed in *Ezra V. Secretary of State* (p), but by Act XXXVIII of 1923, any person interested in any land which has been notified under sec. 4, sub-sec. (1) as being needed for a public purpose or for a company may, within thirty days after the issue of the notification object to the acquisition, of the land or of any land in the locality, as the case may be, and further, provision has been made as to how the said objection on the part of the owner has to be dealt with. *Vide* Sec. 5A(1), (2), (3), *infra*.

The Scheme of the Act I of 1894.—Whenever Land is to be acquired either by the Central Government or by the State Government, it can be acquired only for public purpose or for a company, the purpose of which a so must be relatable to a public purpose. These acquisitions are generally made on behalf of public bodies or companies (under the Companies Act) or Registered Societies. Public purpose is not defined in the Act but is taken in general sense of the term.

Notification, Declaration, Compensation and Award (Sections 4 to 16).—There is first a notification published in the official Gazette and at places in the locality announcing that the land in the locality is needed for a public purpose, specifying the purpose and particularising the land intended to be acquired. A general description would be sufficient. After this notification, it is lawful for an authorised officer to enter any land in the locality to investigate the adaptability of the land for the public purpose and to survey

(m) *Md. Saffi v. State of West Bengal*, A. I. R. 1951 Cal. 97 ; 55 C. W. N. 463 (467).

(n) *Nilmonee v. Rambundhoo*, 4 Cal. 757.

(o) *Somawanti v. State of Punjab*, A. I. R. 1963 S. C. 151 ; (1963) 2 S. C. R. 744 ; (1963) S. C. A. 548 ; (1963) 2 S. C. J. 35.

(p) *Ezra v. Secretary of State*, 30 Cal. 36.

and set out the boundaries of the notified land. Standing crops and fences may be removed but all damages caused must be paid for promptly. Any person interested in the land or any person interested in any land in the locality may object to the said acquisition of the land notified under Sec. 4 and such objections must be considered by the Collector and decided by the Local Government. There must be one notification but there can be several reports on parcels of land and there may be several declarations in respect parcels of land covered by one notification. After the reports if the Government decides to proceed with acquisition after being satisfied as to the purpose being a public purpose, it issues a declaration under Sec. 6 announcing that particular land is required for public purpose. If the notification was issued prior to 20th January 1967, declaration under Sec. 6 shall have to be made within two years from the commencement of Land Acquisition (Amendment and Validation) Ordinance, *i. e.*, within 20th January, 1969. In case of notification issued after the 20th January, 1967, declaration under Sec. 6 must be made within 3 years from the date of such publication of the notification. The Collector is then directed to take order for acquisition and after causing the land to be marked out, the collector issues public notice under Sec. 9 inviting claims to compensation from persons interested. Thereafter an enquiry is made into the objections as to measurement and valuation of the land at the date of the notification under Sec. 4 and then an award is made declaring true area of the land, the compensation which should be allowed and the persons entitled to resume it. Following the Award under Sec. 11 the Collector may take possession of the notified land under Sec. 16 and thereupon the title to the land vests in the Government free from all encumbrances.

Reference, Apportionment and Payment of Compensation—(Sections 18 to 34, Parts III, IV and V).—After the award is made by the Collector any person may refuse to accept the award and apply to Collector, who is bound for referring the dispute for determination of the Court. Dispute may be as to amount, or measurement or persons entitled etc., It is a special Court and after all evidences taken, an award is made by the Land Acquisition Judge which amounts to a Decree. Against the decree an appeal lies to the High Court.

Award is given by the Collector on consideration of (1) market value of land at the date of notification under Sec. 4 ; (2) damages sustained in process of taking possession ; (3) *bona fide* loss etc., but damages likely to be caused after publication of declaration under Sec. 6 or in consequence of the use to which it would be put or any outlay or improvements on, or disposal of the land acquired, made without sanction of the Collector after date of publication of notification under Sec. 4, shall not be taken into consideration.

The L. A. Court cannot reduce the amount of compensation awarded by the Collector, nor it can enhance it to more than the claims made. Every award of Court must specify the amounts awarded in details and the grounds. The Collector shall pay interest @ 6% p. a. on the compensation from the date of Collector's taking possession till it is paid or deposited and the Court is to allow interest on same rate on any excess amount awarded.

Apportionment includes the case when the Court has to decide between rival claimants of the entire compensation. If the claimants agree as to respective shares, Collector shall give an award accordingly and it will be conclusive but if there is dispute, it shall be referred to Court.

If there is difficulty in payment of compensation, the Collector can deposit the amount in Court. The claimant can accept the amounts under protest. If the money is lying in the Court, the Collector can invest it in proper securities for benefit of the claimants.

Temporary occupation—(Sections 35-37).—In case of any waste or arable land the Government can direct the Collector to occupy the land under notification for a temporary period not exceeding 3 years for any public purpose or for company on payment of a compensation or on executing an agreement if possible or on making a reference under Sec. 35 on dispute. On expiration of the term the Collector pays or tenders compensation to persons interested and restores the land to them. If the land has become permanently unfit and if the persons interested so require, the Government is to proceed for its permanent acquisition.

Acquisition of land for Companies: (Part VII)—(Sections 38-44B).—As usual after the notification is issued under Sec. 4 for acquisition of land for companies which also must be relatable to public utility, any officer of a company is firstly authorised to make necessary survey etc., under sec. 4(2). Thereafter, if the appropriate Government is satisfied as to the existence of public purpose and the necessity of the company and gives consent, only then the company will be asked to execute an agreement as laid down in S. 41 and then steps for acquisition will be initiated. Before giving consent the Government must also satisfy itself that the company requires the land for erecting dwelling houses for workmen or for providing amenities directly connected therewith or for a construction of some boundary or work for a company which is likely to be useful to public. Such agreement shall have to be published in the Official Gazette. Such a company must not transfer the land in any manner without previous consent of the appropriate Government. Lands for a 'Private Company' cannot be acquired excepting for the purpose of erection of dwelling house for workmen employed or for amenities connected therewith. In case of an industrial concern not being a company and owned by one or more individual and ordinarily employing not less than one hundred workmen, may have land acquired for purpose of erecting dwelling houses for their workmen or for providing amenities directly connected therewith. All costs of acquisition must be paid by the company.

Procedural—(Part VIII, Sections 45 to 55).—The modes of services of all notices are as under the general law. Obstruction to any lawful officer or authority under this Act is an offence and one is liable to imprisonment for a month and/or to a fine upto Rs. 50/-. Local Magistrates are to enforce surrender of the land acquired for eviction of all persons occupying the land with help of police staffs. If possession of land under acquisition has not been taken by the Government and no award has been made, the Government can withdraw from the land it has proposed to acquire. There can be no withdrawal after the award is made or possession is taken. And on withdrawal all damages must be paid and the land restored to original

owner and in original condition as far as possible. Awards or agreements made under this Act or their copies are exempt from stamp duties. A person having statutory authority under this Act may be sued after a month's notice for abuse of power. The Civil Procedure Code applies in all matters under this Act except as otherwise provided. Appeal lies from award of L. A. Court to High Court. Appropriate Government has got the power to frame Rules.

Extent of the Act.—Subject to the provisions of some local Acts, Act I of 1894 as amended from time to time, was the law of acquisition of land in British India, which was defined by Sec. 3(7) of the General Clauses Act, X of 1897, to mean all territories and places within His Majesty's dominions which were governed by His Majesty through the Governor-General of India or through any Governor or other Officers subordinate to the Governor-General of India. After the passing of the Indian Independence Act 1947, and the Adaptation of Laws (No. 2) Order, 1956, the Act is in force in all Provinces of India viz., the States and territories of India excepting the territories which immediately before the 1st November, 1956, were comprised in Part B States i. e., excepting States of Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra and Travancore-Cochin. By the Constitution (Seventh Amendment) Act, 1956, S. 2, Part B States are abolished and instead the first schedule consists of the States and the Union Territories only, viz. :

The States are—1. Andhra Pradesh (a), 2. Assam. 3. Bihar, 4. Gujarat (b). (5) Haryana (c). (6) Kerala. 7. Madhya Pradesh. 8. Tamil Nadu (d). 9. Maharashtra (e). 10. Mysore (f). 11. Orissa, 12. Punjab (g). 13. Rajasthan (h). 14. Uttar Pradesh. 15. West Bengal. 16. Jammu and Kashmir. 17. Nagaland (i). 18. Meghalay (j).

Union Territories are—1. Delhi, 2. Himachal Pradesh, 3. Manipur, 4. Tripura, 5. The Andaman & Nicobar Islands, 6. Laccadive, Minicoy and Amindivi Islands, 7. Dadra and Nagar Haveli (k), 8. Chandigarh (l), 9. N.E.F.A. (m), 10. Pondichery (n), 11. Goa, Daman Diu (o).

Local application of the Act.—British India also included Scheduled Districts. But the Act did not by its own operation apply to Scheduled

(a) Ins. by Constitution 7th Amendment Act, 1956.

(b) Subs. by Bombay Reorganisation Act 11 of 1960.

(c) Ins. by Punjab Reorganisation Act, 31 of 1966.

(d) Name of Madras altered by the Madras State (Alteration of Name) Act, 53 of 1968.

(e) Subs. by Bombay Reorganisation Act, 11 of 1960.

(f) Subs. by States Reorganisation Act 1 of 1956.

(g) Ins. by Punjab Reorganisation Act 31 of 1966.

(h) Ins. by Bombay Reorganisation Act 11 of 1960.

(i) Ins. by States Reorganisation Act 27 of 1962.

(j) Ins. by Constitution 22nd Amendment Act of 1969 and Assam Reorganisation Act 55 of 1969.

(k) Ins. by Constitution 10th Amendment Act, 1961.

(l) Ins. by Punjab Reorganisation Act, 31 of 1966.

(m) Constituted in 1965.

(n) Ins. by Constitution 14th Amendment Act 1962.

(o) Ins. by Constitution 12th Amendment Act 1962.

Districts. Before it could apply to such Districts a notification by the Local Government under Sec. 3 or Sec. 5 of the Scheduled Districts Act, 1874 was necessary. The Act was declared applicable to the following areas :—

- (1) Santhal Parganas (i).
- (2) District of Hazaribagh, Lohar daga (Ranchi District) (ii).
- (3) Manbhum, Parganas, Dhalbhum and the Kolhan in District of Singhbhum (iii).
- (4) District of Palamau (iv).
- (5) Angul District (v).
- (6) Khondmals District (vi).
- (7) N.E.F.A. (vii).

Interpretation of the Act.—English cases on construction of English statutes are great assistance sometimes in construing Acts of the Indian Legislature ; but, of course, it is always necessary to see that the Indian Statute and the English statute resemble one another in *pari materia* and not only in a portion of a section which for convenience of drafting has been adopted by the draftsman of the Indian Act (h). Where an Indian Act was passed for the purpose of extending to India the provisions of the English Act, English decisions may be referred to as a guide to construe the Act, (i). In construing Cls. (i) and (ii) of section 32(1) of the Act, Mookerjee, J. observed that the clause (i) is based on section 69 of the Lands Clauses Consolidation Act, 1845 and ought to be interpreted in the same manner as the corresponding section of the English Statute. This, said he, is the legitimate mode of interpretation of statutory provisions (j). unless the English statute and the Act of the Indian legislature are in *pari materia* references to English decisions, instead of affording any help, will only tend to confuse the consideration of the matter in issue (k). In construing a section of the Indian Act, cases bearing upon the construction of similar provisions of an English Act, different in its language, can be of little or no assistance (l). A judge should not interpret statutory law, when it provides for a specific procedure, by reference to a decision pronounced under a different system of procedure (m). In construing a section of an Indian Act which is professedly based on English enactment, which, in fact, reproduces almost word by word the language of the English enactment, we

(i) Santhal Parganas Settlement Regulation III of 1872, S. 3.

(ii) See Calcutta Gazette 1899 Pt. 1, p. 44.

(iii) See Gazette of India 1894 Pt. 1, p. 400.

(iv) See Gazette of India 1894, Pt. 1, p. 639.

(v) See notification under S. 3 Angul Law Regulation III of 1936.

(vi) See District Law Regulation 1936, (4 of 1936) S. 3 and Sch.

(vii) See N.E.F.A. (Extension of Laws Regulation) 1960 (3 of 1960) vide S. 3 and Sch.

(h) *Pershad Singh v. Ram Protap Ray*, 22 Cal. 77.

(i) *Ganesh v. Harihar*, 31 I. A. 116 : 26 All. 292 (P. C.) : 8 C. W. N. 521 : 14 M. L. J. 190 : 6 Bom. L. R. 505.

(j) *Kamini Devi v. Pramatha Nath Mookerjee*, 39 Cal. 33.

(k) *Ezra v. The Secretary of State*, 30 Cal. 36, 7 C. W. N. 249.

(l) *Collector of Dinajpur v. Girijanath*, 25 Cal. 346.

(m) *Radha v. Lakhmi*, 31 C. L. J. 283 ; 24 C. W. N. 454 56 I. C. 541.

are in practice, if not in theory, bound by the decisions of the English Court (n). When we are construing an Act which in many instances is taken word for word from an English Act, and when we are dealing with a branch of law which is essentially English law, though we may not be actually bound by it, yet we ought certainly to pay the greatest respect to the decisions of the English Court of Appeal, per. White, C. J. (o).

In case of dubiety in the interpretation in matters of procedure under the Act, the benefit of doubt ought to be given to the party as against the Government. In case of any error of procedure by any officer in applying the provision of Act, every presumption should be made in favour of the party likely to have been prejudiced by the error (p).

Interpretation differs from construction in that the former brings out the true sense of the words used in the statute. Construction on the other hand, is the drawing of conclusions regarding subject which lie beyond the direct expression of the text, conclusions, which are in the spirit though not within the letter of the law (q). Cooley on Constitutional Limitations p. 70.

Interpretations can therefore be of two kinds :—(1) Grammatical i. e., interpretations as described above, and (2) Logical i. e., construction within above meaning. In all ordinary cases, the court must accept the language as the exclusive and conclusive evidence of the mind of the Legislature. It must in general, take it for granted that the legislature has said what it meant what it said. It is not competent to proceed upon the assumption that the Legislature has made a mistake. It can not put into words which are not expressed (r).

In finding out the logical interpretation the spirit of enactment, pre-existing state of law, provisions repealed and re-enacted, proceedings of Legislature, the title and the preamble, headings and marginal notes, saving clause etc., have all got to be considered.

Where the words of a Statute is clear and unambiguous, natural and ordinary meaning of those words shall be taken and where alternative construction are equally open, that alternative which is consistent with the scheme of the Act is to be chosen (s). Hardship or inconvenience cannot alter the clear meaning of the language used by the legislature (t).

Special or Local Act and the Land Acquisition Act 1894.—Land is acquired by the Government under this Act or under any other Special or Local

(n) *Ramendra v. Brajendra*, 21 C. W. N. 704 ; 41 I. C. 944.

(o) *The Mercantile Bank of India Ltd., v. The Official Assignee of Madras*, 39 Mad. 250 ; 35 I. C. 942.

(p) *Venkatrama Iyer v Collector of Tanjore*, 53 M. 921 ; 1930 M. W. N. 613 ; 60 M. L. J. 410 ; 128 I. C. 14.

(q) *Webb v. Outtrim*, 1907 A. C. 81 ; Cooley on Constitutional Limitations, p. 70.

(r) *Nalinakshya Baisack v. Shyam Sundar*, A. I. R. 1953 S. C. 148 ; 1953 S. C. R. 533 ; *Kumar Kamala Ranjan v. Secretary of State*, 66 I. A. 1 ; *Janardhan Reddy v. State of Hyderabad*, 1950 S. C. R. 940 ; A. I. R. 1951 S. C. 124 ; *Aswini Kumar v. Arabindo*, A. I. R. 1952 S. C. 369 ; 1953 S. C. R. 1.

(s) *Collector of Customs v. Digvijaya Spinning and Weaving Mills Ltd.*, 1961 S. C. 1569 ; *Soorajni v. Commissioner of Income-tax*, 1961 Cal. 578. ; *Rajkrishna v. Benode*, 1954 S. C. 202.

(t) *Hira Devi v. District Board, Shahjahanpur*, 1952 S. C. 362.

Acts by virtue of item No. 4 of List III of the Constitution. The provisions of this Act can be applied when acquisition is made under this Act. Acquisitions under any other Special or Local Act are governed by the provisions of that particular Special or Local Act (u).

A certificate of existence of "public purpose" by the Government on acquisition of land is not required if the property is acquired under some other special Act which does not provide for such certificate directly or by implication. The fact that this Act is in force does not mean that proceedings for requisition cannot be taken under some other Act (v).

When a special Act provides methods of assessing compensation, it is not necessary to take proceedings under this Act (w). The Commissioners purported to act under the Bombay Municipal Act and it was held that it was not necessary for him to proceed under this Act and that compensation can be calculated in accordance with S. 30 of the Municipal Act.

It is not necessary for Railway authorities to take proceedings under this Act because of the powers given under S. 7 of the Indian Railways Act though they are subject to any enactment as to acquisition of land, yet there is nothing in this Act cutting down the powers specified in S. 7.

When the operation of an Act is inducted by special provisions in a subsequent Act, the subsequent amendments of the first Act does not operate on the latter Act, unless otherwise expressly provided (x).

The rules of general law, if they are in accordance with the principles of justice, equity and good conscience, may, on matters for which no express or specific provisions have been made in the Act, be applied in cases arising under this Act, but not otherwise. Any presumption or rule of construction or, of conveyancing, unless just and equitable can not be applied to compulsory acquisitions of land (y). Certain lands requisitioned by the Government for military purposes under Defence of India Rules were de-requisitioned and the Collector made an award in proceedings started under L. A. Act. It was held that steps taken under the Act were not in continuation of proceedings under the Defence of India Rules and S. 162 of Code of Civil Procedure had no application for amendment or correction of an award (z).

The Government of India Act 1935

The principle that there can be no acquisition for public purposes without compensation, has been accepted by Sec. 299 of the Government of India

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- (u) *Raja Rajendra Malojirao v. The State of Madhya Bharat*, A. I. R. 1953 M. B. 97.
 - (v) *Raja Surya Pal Singh v. The U. P. Government*, A. I. R. 1951 A. 674.
 - (w) *Norma v. Municipal Commissioner of Bombay*, I. L. R. 42 Cal. 462.
 - (x) *Secretary of State v. Hindusthan Co-operative Ins. Society*, I. L. R. 59 Cal. 65; 58 I.A. 259.
 - (y) *Jagdish Chandra Deo Dhabai Debi v. Indian Copper Corporation Ltd.*, A.I.R. 1953 Pat. 283.
 - (z) *Nirmal Chakravarti v. The Land Acquisition Collector*, A.I.R. 1953 Cal. 257.

Act, 1935 (25 and 26 G. O. 5C, 42) as adapted by the India (Provisional Constitution) Order, 1947 and which runs as follows :—

299. (1) No person shall be deprived of his property save by authority of law.
- (2) Neither the Dominion Legislature nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes, of any land, or any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation or specifies the principles on which and the manner in which, it is to be determined ;
- (3) No Bill or amendment making provision for the transference to public ownership of any land or for the distinguishment or modification of rights therein, including rights or privileges in respect of land revenue shall be introduced or moved in the Dominion Legislatures without the previous sanction of the Governor-General or a Chamber of Provincial Legislature without the previous sanction of the Governor.
- (4) Nothing in this Section shall affect the provision of any law in force at the date of the passing of the Act.
- (5) In this section "Land" includes immovable property of every kind and any rights in or over such property and "undertaking" includes part of an "undertaking".

The Constitution of India in relation to Acquisition of Property

"Art. 19 (1). All citizens shall have the right—

* * * * *

(f) to acquire, hold and dispose of property";

* * * * *

By the Constitution (First Amendment) Act, 1951 the amendment relevant for the purpose of this Act, are made in Article 19 by substitution of Cl. (2) which after amendment runs as follows :—

"(2) Nothing in Sub-Clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the [sovereignty and integrity of India], the security of the State, friendly relations with Foreign States, public

¹ This clause has been inserted by the Constitution (Sixteenth Amendment) Act 1963, which came into force on 6th October 1963. Clauses (2), (3) and (4) have been amended in order to include the maintenance of sovereignty and integrity of India as a ground of restriction of fundamental rights of expression, assembly and association, guaranteed by Sub-Cls. (a)—(c) of Cl. (1) (a) of Art. 19.

order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence." This clause excepting portion amended by the Sixteenth Amendment Act, 1963, has been held to be void with prospective operation only. Therefore the said amendments will continue as valid so far as laws already enacted and included in the Ninth Schedule but there can be no further abridgment of fundamental rights by new laws under the above clause, (a). In other words the fundamental rights will be protected as far as allowed by the original clause (2) and any violation of the same by any new law will be void.

Clause (2) before the 1st Amendment Act 1951 ran as follows :—

S. "T9 (2).—Nothing in Sub-Clause (a) of Clause (1) shall affect the operation of any existing law in so far as it relates or prevents the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of or tends to overthrow, the State". But this clause relates only to freedom of speech and expression only.

* * * * *

(5) Nothing in Sub-Clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing, reasonable restrictions on the exercise of any rights under the said Sub-Clauses either in the interest of the general public or for the protection of the interests of any Scheduled Tribe."

* * * * *

After the Constitution (Fourth) Amendment Act of 1955 which came into force on 27-4-1955 and (Seventeenth) Amendment Act 1964 coming into effect on 10-6-64, Article 31, 31A and 31B of the Constitution run as follows :—

"Art. 31. Compulsory Acquisition of property.

Right to Property

(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given ; and no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation-owned or controlled by the State, it shall not be deemed to provide for the

(a) *C. Golak Nath v. The State of Punjab*, A.I.R. 1967 S.C. 1643,

compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(3) No such law as is referred to in clause (2) made by the legislature of a State shall have effect unless such law having been reserved for the consideration of the President, has received assent.

(4) If any Bill pending at the commencement of this Constitution in the legislature of a State has, after it has been passed by such legislature, been reserved for the consideration of the President and has received his assent, then notwithstanding anything in this Constitution, the law assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty ; or

(ii) for the promotion of the public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other Country, or otherwise with respect to property declared by law to be evatee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification ; and thereupon if the President by notification so certifies, it shall not be called in question in any Court on the ground that it contravenes the provisions of of clause (2) of this Article or has contravened the provisions of sub-section (2) of Section 299 of the Government of India Act, 1935.

31-A. (1) : Notwithstanding anything contained in article 13, no law providing for—

(a) The acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the Corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement; lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination, or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 :

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent :

¹Provided further that where any law makes any provision for the acquisition by the State of any estate and where any law comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portions of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article—

(a) the expression 'estate' shall in relation to any local area have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

- (i) any *jagir*, *inam* or *muafi* or other similar grant and in the States of Madras and Kerala any *Janmam* right ;
- (ii) any land held under *ryotwari* settlement,
- (iii) any land held or let for purpose of agriculture or for purpose ancillary thereto, including waste land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans ;

31-B. Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with or takes away or abridges any of the rights conferred by any provisions of this Part, notwithstanding any judgement, decree or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

Clauses 31-A and 31-B are inserted by the Constitution First Amendment Act, 1951 but declared void with prospective effect from 27th February, 1967 by the Supreme Court in *C. Golak Nath v. The State of Punjab*. (a). So laws other than those that are already existing in the Ninth Schedule of the Constitution and abridging any of the fundamental rights, shall be void and subject to Article 31 as it stood prior to 1st, 4th and 17th Amendment Acts.

¹ Added by Constitution 17th Amendment Act 1954.

(a) *C. Golak Nath v. State of Punjab*, A. I. R. 1967 S. C. 1643.

Before Amendments Art. 31 ran as follows :—

31. (1) (Same as stated hereinbefore.)

“(2) No property movable or immovable including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.”

Clauses (3), (4), (5) and (6)—no change.

Articles 31-A and 31-B were non-existent.

Article 298 :—As amended by S. 20 of the Constitution 7th Amendment Act 1956 :—

(1) The executive power of the Union and of each State shall extend to the carrying of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose ;

Provided that—(a) The said executive power of the Union shall in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State ; and (b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.”

Legislative power.—The Constitution (Seventh Amendment) Act 1956 deleted entry 33 in list, (Union list) which was ‘Acquisition or requisitioning of property for the purposes of the Union’ and also entry 36 in list II (State list) which was ‘Acquisition or requisitioning of property, except for the purposes of the Union subject to the provisions of entry 42 of list III’ and also amended the entry 42 of list III concurrent list to which latter entry now reads merely as ‘acquisition and requisitioning of property’. Entry 42 of list III previously ran on ‘principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given.’

The result is that both the Union and the State Legislatures have now concurrent jurisdiction over the entire field of acquisition and requisitioning and the question of *vires* of either Legislature can no longer be agitated on the footing of the ‘purpose’ of the acquisition i.e., whether it is a Union or other than a Union purpose, such a disclosure in the notification is no longer necessary.

Interpretation of Cl. 2, Art. 31 (before Amendment).—In view of Golak Nath’s case the clause as it originally stood is relevant.

Limitation imposed by Art. 31(2).—Cl. (2) of the Article (before amendment) prescribes a twofold limit within which such superior right of the State can be exercised—

(i) One limitation is that such taking must be for a “public” purpose.

- (ii) The law which authorises the appropriation must provide for payment of compensation to the owner in the manner laid down in the Clause.

Subject to payment of compensation, any kind of property may be acquired under the power of eminent domain and there is no exception in favour of public religious or charitable trusts. The obligation to pay arises only when the interests taken by the State are property rights recognised as such by the law. Therefore, property includes anything which is capable of being used, enjoyed and disposed of under the law.

Public purpose :—The question of public purpose is justiciable provided there is material on record to show that Government acted blindly or in *malafide* manner (b).

Justiciability of the amount of compensation.—It has been held by Supreme Court that the very word 'compensation' means a 'full and fair money equivalent' of the property taken and any law which denies this must be held to be void (c). When the provision for compensation is merely a cloak for confiscatory legislation or the principles laid down in a law resulting in non-payment of compensation, the Courts can interfere (c).

Time factor and nature of compensation.—The compensation that is payable is the money equivalent of the property *at the time when the property is acquired* (c), so as to restore the owner, the actual value of the property in its actual condition at the time of expropriation (d).

To provide, in a permanent enactment, that whenever any land is acquired under the Act, the appropriated owner will get the market value of the land as it stood in a particular year (1946), is arbitrary and is not in compliance with the Constitutional requirement to provide the principles on which 'compensation' is to be given (c).

But it must be noted that the effect of *State of Gujarat v. Shantilal* (e), seems to be :—

- “(1) Compensations must be in terms of money in case of acquisitions under the Land Acquisition Act, but laws can be enacted providing for compensations to be 'given' not in money but in other properties or lands etc., in lieu of money”.
- (2) “The fact that considerable time has elapsed since the declaration of intention to make a scheme for acquisition and the extinction of interest of the owner, can not be a ground for declaring a Section (of Bombay Town Planning Act No. 27 of 1955) *ultra-vires*”. But this does not debar the right to challenge the award on various other grounds.

(b) *Suryapal Singh v. State of U. P.* 1953 S. C. A. 932 ; *State of Bihar v. Kameswar*, 1952 S. C. R. 889 (902, 935) ; *Province of Bombay v. Khusaldas*, 1950 S. C. R. 621 ; *Ratilal Shankerbhai v. State of Gujarat*, A. I. R. 1970 S. C. 984.

(c) *State of West Bengal v. Bela Banerjee*, 1954 S. C. R. 41 (46) ; *Syed Abdul Gaffur v. State of W. Bengal*, 73 C. W. N. 649 ; *State of West Bengal v. Subodh Gopal Bose* A. I. R. 1954 S. C. 92 ; 1954 S. C. R. 587.

(d) *Fraser v. City of Fraserville*, 1917-A. C. 187 (194).

(e) *State of Gujarat v. Shantilal*, A. I. R. 1969 S. C. 634.

- (3) "In Laws enacted prior to Constitution 4th Amendment Act 1955, Bela Banerjee's and Subodh Gopal Bose's case continued to apply" but not to subsequent Acts. (*vide* notes in 'Leading Cases').

If the purpose of acquisition or requisition is not a public purpose and if the law does not fix any compensation or lay down any principle for compensation then the law is *ultra-vires* Art. 31(2) of the Constitution.

In *Lachman Das v. Municipal Committee, Jalalabad*, (f), which was a case under S. 20B of the Displaced Person (Compensation and Rehabilitation) Act, 1954, and wherein S. 20B provided *inter-alia* that the Central Government may deprive a rightful owner from restoring the property to him if it is of opinion that it is not expedient or practicable to restore the whole or part of the property for the reason either because it is in occupation of a displaced person or for any other reason, and it also provides for cash payment or other property in lieu of the original property acquired. It has been held by the Supreme Court that to rehabilitate a displaced person, is a public purpose but the provision that if a displaced person is in occupation of somebody's property he should not be given other property because it will not be expedient or practicable to do so for its own convenience or for convenience of a lessee or licensee who is not a displaced person, it may not restore property, is not a public purpose. Besides the said section does not prescribe the point of time at which the value is to be ascertained and nothing is said about the cash being equivalent to the value of the property which is sought not to be restored. The said section was held *ultra vires* Art. 31(2) of the Constitution.

Effect of Amendment of the Constitution and Compensation

Art. 31 Cl. (2) and Cl. (2A).—The amendments in the 1st part of Cl. (2), has been made in order to distinguish the scope of Cl. (2) from Cl. (1) which had been blurred by interpretation given in *State of West Bengal v. Subodh Gopal Bose* and in *Dwarkanadas v. Sholapur Spinning Co.* (g), by the Supreme Court, that the two clauses relate to the same subject.

Cl. (2A) has been inserted to supersede the decisions in the aforesaid two cases as also in *Saghir Ahmed v. State of U. P.* (h). It will no longer be possible for the Court to take any extended view of the word 'acquisition' as was taken in the above case. The words taken 'possession of' in Cl. (2) has also been substituted by word 'requisitioned' with same object.

It will no longer be relevant for the purpose of determining whether an obligation to pay compensation arises under Art. 31 (2), to enquire whether the individual has been "substantially dispossessed" or whether his right to use and enjoy the property has been 'seriously impaired' or the value of the property has been materially reduced by the impugned action.

(f) *Lachmandas v. Municipal Committee, Jalalabad*, A. I. R. 1969 S. C. 1126.

(g) *State of W. B. v. Subodh Gopal Bose*, 1954 S. C. R. 587; *Dwarkanadas v. Sholapur Spinning Co.*, (1954) S. C. R. 674.

(h) *Saghir Ahmed v. State of U. P.*, (1955) 1 S. C. R. 707,

It will no longer be possible to contend by virtue of Cl. (2A) that clauses (1) and (2) relate to the same subject and that they are co-extensive. While all cases of 'deprivations' are included within the purview of Cl. (1) the cases of acquisition and requisition involving transfer of title or right to possession to the state, are specifically covered by Cl. (2) and so no other mode of deprivation can be made to come under purview of Cl. (2) and attract its operation.

So no liability for compensation can arise in cases of restriction or regulation of rights of ownership, or in cases of harm or injury or damage caused to the proprietary rights of an individual due to State Legislation or Regulations, and also in cases of total destruction of property without involving any transfer of ownership or right to possession to the State.

The only cases where compensation is payable under Art. 31 are—where property is physically or constructively transferred to the State or to a Corporation owned or controlled by the State.

The decisions given in *W. B. Co-operative Society v. Bella*, (i), by Calcutta High Court and in *State of W. B. v. Bela Banerjea* (j), by the Supreme Court invalidating legislation only on the ground that the compensations provided is 'illusory' and 'inadequate' stood superseded by virtue of the 4th Amendment of the Constitution which came into force in April, 1955 and which precluded any judicial review of a law of acquisition or requisition on the ground that the compensation provided for was 'illusory' and 'inadequate' till Golak Nath's case that declared the 4th Amendment *ultra vires* with prospective effect so that it is always justiciable. See also *P. Vajravelu v. Special Dy. Coll. Madras* (k), The Land Acquisition Bombay Amendment Act, 1948, is declared *ultra vires* (l).

In *Bombay Dyeing Co., v. State of Bombay*, (m), it was made clear that compensation is not payable in any case coming under Cl. (1) not being cases of acquisition and requisitioning. In *Kochuni v. State of Madras* (n), the Supreme Court held that Cl. (1) dealt with cases of deprivation of property otherwise than by acquisition and requisitioning. In *Burrakar Coal Co. v. Union of India*, (o), the Supreme Court has examined the applicability of the principle of reasonableness under Art. 19(1)(g) to test the constitutionality of the Coal Bearing Areas (Acquisition and Development) Act, 1957, which according to the Court, was a law under Cl. (2) of Art. 31 being protected by the shield of Art 31A, otherwise it would have been struck down.

The Metal Corporation of India (Acquisition of Undertaking) Act, 44 of 1965—The abovementioned Act was declared void by the Supreme Court in *Union of India v. Metal Corporation of India Ltd.*, (p), on the ground that it

(i) *W. B. Co-operative Society v. Bella*, A. I. R. 1951 Cal. 111. .

(j) *State of W. B. v. Bella*, (1954), S. C. R. 558.

(k) *P. Vajravelu v. Special Dy. Coll., Madras*, 1964(2) S. C. J. 703.

(l) *N. B. Jeejeebhoy v. Thana Prantig, thana*, A. I. R. 1965 S. C. 1096.

(m) *Bombay Dyeing Co. v. State of Bombay*, 1958 S. C. R. 1122 (1131).

(n) *Kochuni v. State of Madras*, A. I. R. 1960 S. C. 1080.

(o) *Burrakar Coal Co. v. Union of India*, A. I. R. 1961 S. C. 954.

(p) *Union of India v. Metal Corporation of India Ltd.*, A. I. R. 1957 S. C. 637,

is violative of Art. 31-A of the Constitution for not having provided for just compensation. But this case was overruled by the Supreme Court by a larger bench in *State of Gujarat v. Shantilal Mangaldas (q)*, on the ground that the principles provided in the abovementioned Act were not irrelevant to the determination of compensation and the compensation was not illusory. The previous decision was wrong.

No deprivation except under law :—Clauses (1) and (2) of Art. 31 provide that any deprivation of one's 'property' not sanctioned by law, is illegal and no action will lie for any deprivation which is authorised by law. There is a right to compensation when the law intends to acquire or requisition property for "public purposes", A law coming within scope of Cl. (2) but without providing for compensation, would be void subject to Cls. (4-6) of Art. 31 and Arts. 31A-31B. Hence the scope of Cl. (1) is confined to cases of deprivation other than in exercise of the power of 'eminent domain' and 'taxation', (r). The principle of 'eminent domain' is the power of the sovereign to take property for public use without the owners' consent.

'Due Process' of Law—meaning of—Petitioner prevented from filing an appeal.—Compensation payable to a landowner was determined by a judgment of Additional District Judge. In the meantime Government took decision to de-requisition the property and there was an assurance that no appeal would be filed. But ultimately the decision to de-requisition was given up and the property was sought to be acquired on payment of compensation fixed by previous judgment of Addl. Dist. Judge. But by that time the period for filing the appeal was over. Held that the acquisition in the circumstances would amount to an acquisition without payment of correct, just and adequate compensation. For the sustenance of an 'acquisition' the compensation payable to the citizen mentioned in Art. 19 should be arrived at after a free exercise by him of all remedies open to him to realise compensation through 'due process of law'. The phrase 'due process of law' means that the citizen and the acquiring authority have had free and unhampered recourse to all available legal remedies (s).

Public purpose—justiciability.—(See Notes under 'Public Purpose') anti.

Matters that are still justiciable.—In spite of the Constitution (Fourth Amendment) Act 1955, the following questions still remain justiciable.—

1. Whether the law impugned provides for 'acquisition' or 'requisition'.
2. Whether the acquisition or requisition has been effected by the authority of law.
3. Whether the Legislature in question had the legislative competence to enact the legislation.
4. Whether the law provides acquisition etc., for 'public purpose'.

(q) *State of Gujarat v. Shantilal Mangaldas*, A. I. R. 1969 S. C. 634.

(r) *Virendra v. State of U. P.* (1955) I. S. C. R. 415 and *Ramjilal v. I. T. O.*, A.I.R. 1951 S.C. 97 ; *Laxmanappa v. Union of India*, (1955) 1, S.C.R. 769 and *Chiranjit Lal v. Union of India*, (1950) S.C.R. 869.

(s) *Jai Dev & Ors. v. Land Acquisition Collector, Mandi*, A.I.R. 1971 Delhi 35 (D.B.).

5. Whether there has been any deviation by the executive from the principle laid down in the statute on which and the manner in which the compensation is to be determined.

6. Whether the law impugned has failed to lay down any principle on which the compensation is to be determined. Where a legislature authorised the Executive to acquire or requisition property on payment of any compensation it chose to fix at its discretion, the Court would be entitled to interfere (t).

7. Whether the impugned law does not provide for compensation at all or lays down principles which in effect provides for nil or illusory compensation.

8. Whether the impugned law offends against any Article of Part III of the Constitution other than Art. 31(2).

9. Whether the impugned law offends Art. 14, (u).

10. Whether the 'Company' on whose behalf acquisition etc., is made is a public company or not, (v).

Where compensation need not be paid.—The Constitution (Fourth Amendment) Act 1955 makes it clear that mere deprivation of 'property' within the meaning of Cl. (2A) i.e., without transfer of title or right to possession, will not attract Cl. (2). Consequently there is no obligation to pay compensation in the following nature of cases—

(1) Where the relationship of landlord and tenant is merely regulated although rights are curtailed, (w).

(2) Where an owner of a property is affected because of legislation that somehow lowers the value of the property, (x).

(3) Where an owner is deprived of his property in exercise of the 'police' or 'regulatory' powers of the State e. g., where the State enters into business as a monopolist and cancels permits of existing traders, (y).

(4) Where adulterated foodstuffs are seized and destroyed or delapidated structures are destroyed by Municipal authorities or firebrigades for public safety; (z).

(5) Where restrictions are imposed on transfer of property by evacuees, (a).

(6) Where a property is to be administered by the State, (b).

(7) Where goods are seized under Sea Customs Act or Foreign Exchange Regulations, (c).

(t) *State of Rajasthan v. Nathmal*, A.I.R. 1954 S.C. 307.

(u) *Than Singh v. Union of India*, A.I.R. 1955 Punj. 55.

(v) *R. L. Aurora v. State of U. P.* (1962) 1 S.C.A. 182.

(w) *Sri Krishna v. State of Rajasthan*, (1955) 2, S.C.R. 531; *Jogeswar v. Bircha*, A.I.R. 1956 Pat. 149 (151).

(x) *Bapubhai v. State of Bombay*, A.I.R. 1956 Bom. 21.

(y) *Nageswar v. Andhra Pradesh*, S. R. T. Corp., A. I. R. 1959 S. C. 308 and *Ramchandra v. State of Orissa*, 1956 S.C.R. 346.

(z) *State of W. B. v. Subodh Gopal*, (1954) S.C.R. 587.

(a) *Sadhuram v. Custodian*, (1956) S.C.A. 70.

(b) *Abdul Majid v. Nayak*, A.I.R. 1961 Bom. 440.

(c) *Shew Pujan v. Collector*, A.I.R. 1952 Cal. 789.

(8) Where rights of a joint family manager are terminated or restricted to partition of coparceners' property, (d).

(9) Where the State merely exercises a power of superintendence over endowed property, (e).

(10) Where the State exercises powers of superintendence over the affairs of a company, (f).

(11) Where under a scheme of consolidation, village land is taken from individual owners and set apart for their common use, (g).

(12) Where revenue free land is assessed to land revenue (h).

(13) Where State seeks to recover possession of land owned by it, (i).

(14) Where State puts an end to certain interests e. g., those of Hindu reversioners, by a law regulating succession, (j).

Clause (3) of Art. 31 of the Constitution.—This clause refers to only where the State Legislature enacts substantive laws subsequent to the commencement of the Constitution. An Act which amends an existing law which is covered by clause (5) is also covered by that clause and need not comply with the requirements of Cl. (3), (k). Where the requirement of Art. 31 (3) has not been complied with, any proceedings taken under the Act shall be void, (l).

Clause (4) of Art. 31 of the Constitution.—Clause (4) relates to Bills of State Legislature relating to public acquisition which were pending at the commencement of the Constitution and which must require the assent of the President when passed so as to have the effect of a valid law. When such assent is received, the court shall have no jurisdiction to question the validity of such law on the ground that it does not provide for compensation or that it has been enacted without a public purpose (m).

The view of the Supreme Court in *State of Bihar v. Kameswar* (n) to the effect that although Art. 31 and 31-A and B precluded the court from striking down a legislation coming within the purview of these provisions on the ground that the provisions for compensation was inadequate but did not preclude the court from striking down the law as 'colourable' if it provided for non-payment of compensation or for what is no compensation at all, stands superseded by the Constitution (Seventh Amendment) Act, 1956, which has taken out the condition of compensation from the legislative power relating to acquisition and requisitioning of property in Entry 42, List III. The amended Entry only states—"Acquisition and requisitioning

(d) *Santhamma v. Neelamma*, A.I.R. 1957 Mad. 643.

(e) *Bijoyananda v. State of Bihar*, A.I.R. 1957 Pat. 266.

(f) *Dwarkanadas v. Sholapur Spinning*, A.I.R. 1954 S.C. 119.

(g) *Kure Singh v. State of Punjab*, A.I.R. 1956 Punj. 88.

(h) *Girijananda v. State of Assam*, A.I.R. 1956 Assam 33.

(i) *Dhirendra v. State of W. B.*, A.I.R. 1956 Cal. 437.

(j) *Bhabani v. Sarat*, A. I. R. 1957 Cal. 527.

(k) *Lilavati v. State of Bombay*, A. I. R. 1957 S. C. 521.

(l) *Rameswar v. Misra*, A. I. R. 1959 Pat. 488.

(m) *Umesh Singh v. State of Bombay*, (1955) 2 S. C. R. 164 and *Jagveera v. State of Madras*, 1954 S. C. R. 761 : A. I. R. 1954 S. C. 257.

(n) *State of Bihar v. Kameswar*, A. I. R. 1952 S. C. 252 : 1953 S. C. A. 53.

of property". It follows therefore that in cases to which Cl. (4) is attracted i. e., in case of pending Bills only, the Court would be powerless to interfere even though the law provides for no compensation at all, (o).

Art. 31(2) specifically provides in substance of payment of compensation, however inadequate it may be, when land is acquired or requisitioned for public purpose under Central or State Legislations or Acts and it has been held that any attempt for non-payment of compensation in such cases will be invalid for contravention of Art. 31 (2) itself. But a Bill pending in State Legislature (Bill pending in Central Legislature seems to have been excepted) at the commencement of the Constitution and receiving assent of President and thereby becoming an Act, need not provide for any compensation at all, even though it is for acquisition or requisition of land for public purposes as required under Art. 31 (2). The Constitution of India has raised this obligation to pay compensation for the compulsory acquisition of property to the status of a fundamental right and declared that a law that does not make provision for payment of compensation shall be void. But Art. 31 (4) provides, as stated above, that a pending Bill of a State after becoming an Act shall not be called in question on the ground that it contravenes the provisions of clause (2). Art. 31 (2) confers a right while 31 (4) lays down a procedure.

Further Art. 31 (3) requires the assent of the President for validating an existing State Law as referred to in clause (2) but the clause i. e., Cl. (3) does not include the saving that when once the assent of President is received, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of Cl. (2), or in other words an existing State Law subject to Cl. (6) of Art. 31 receiving assent of President shall be void if it contravenes any of the provisions of Art. 31 (2) but not so if a pending State Bill becomes a law with President's assent under Art. 31 (4). This is yet to be clarified.

Clause (5) of Art. 31 of the Constitution.—*Saving of certain laws from operation of Cl. (2).*—With regard to following laws coming under this clause, the court shall have no power to examine the validity of the legislation either on the ground of there being no provision for compensation or on the ground of non-existence of public purpose :

- (a) Existing laws other than the laws enacted more than 18 months before the commencement of the Constitution.

The Land Acquisition Act 1894 is a pre-Constitution law and an existing law within the meaning of Art. 31 (5) (a) of the Constitution and so it is protected from the operation of Art. 31 (2) and for alleged infringements under Art. 31 (2), 19 (1) (f) of the Constitution. These attacks will be futile, (p). But still the inadequacy of compensation can be challenged if the system of assessing compensation is enacted by a legislature in fraud of

(o) *Umesh Singh v. State of Bombay*, (1955) 2 S. C. R. 164 (182) ; *Jagveera v. State of Madras*, 1954 S. C. R. 761 ; *State of Bihar v. Kameswar*, A.I.R. 1952 S.C. 252.

(p) *Babu Barkya Thakur v. The State of Bombay*, (1961) 1, S. C.R. 128 ; *The State of Bombay v. Bhanji Munji*, 1955 (1) S. C. R. 777 ; *Lilavati Bai v. The State of Bombay*, 1957 S. C. R. 721.

its powers by making the compensation illusory and such law must be struck down, (g).

(b) Laws enacted by the State after the commencement of the Constitution, for the purpose of—

- (i) *Levying any tax.* This seems to be redundant, in as much as, taking of property under power of taxation is treated separately under Art. 265 of the Constitution. This also requires clarification (r).
- (ii) *Levying any penalty.* It is a form of punishment and includes forfeiture of property imposed for violation of a law, (s).
- (iii) *for the promotion of public health* e. g., clearing up of slums etc, (t).
- (iv) for the prevention of danger to life e. g. acquisition for establishing hospital for treatment of plagues etc, (u).
- (v) for the prevention of danger to property e. g., pulling down a house on fire to save others.
- (vi) for the implementation of an agreement relating to evacuee property : there is already a Union Legislation viz., Administration of Evacuee Property Act (XXI of 1950). Hence no compensation is payable for taking possession of evacuee property, (v)

Art. 31 (6) of the Constitution.—Cl. (6)—*Validity of pre-Constitution laws.*—This clause lays down that a pre-Constitution State law shall not be questioned in any Court on ground of contravention of Cl. (2) of Art. 31 or of S. 299 (2) of Government of India Act, 1935, if it satisfied two conditions viz. : (i) that it was enacted within 18 months before 26-1-50 and (ii) that it was submitted for the President's certification by 26-4-50 and was certified by him. But a State law passed within 18 months before 26-1-50 and President's certificate not obtained, it will not be protected, e. g. Bengal Land Development and Planning Act 1948 (w), and Madras Aliyasanthana Act, 1949, (x). Orissa (Development of Industries Irrigation etc.), Land Acquisition Act 1948 (y), and Bihar Maintenance of Public Order Act, 1949 (a). Madras Electric Supply Undertakings (Acquisition) Act, 1949 etc, were declared *ultra vires* on the ground that the Federal or Provincial Legislature had no power to make law with respect to compulsory acquisition of a commercial or industrial undertaking, (b).

Article 31-A of the Constitution.—The original Art. 31-A was confined to laws for the acquisition of any 'estate' or of rights therein. The Article,

(g) *P. Vajravelu Mudaliar v. Special Dy. Collector, Madras*, 1964 (2) S. C. J. 703.

(r) *Ramjilal v. I. T. O.*, A. I. R. 1951 S. C. 97.

(s) *Kuberdas v. State of Bombay*, A. I. R. 1960 Bom. 459.

(t) *State of W. B. v. Subodh Gopal*, (1954) S. C. A. 65.

(u) *State of W. B. v. Subodh Gopal*, *ibid.*

(v) *Abdul Majid v. Nayak*, A. I. R. 1951 Bom. 440.

(w) *State of W. B. v. Bela Banerji*, 1953 S. C. A. 41 (44).

(x) *Santhamma v. Neelamma*, A. I. R. 1957 Mad. 642.

(y) *State of Orissa v. Bharat*, A. I. R. 1955 Orissa, 97.

(a) *Ajablal v. State of Bihar*, A. I. R. 1956 Pat. 137.

(b) *Rajahmundry Electric Supply Co. v. State of Andhra*, (1954) S. C. A. 272 (277).

as amended, by the Constitution (Fourth Amendment) Act 1955, includes, within its laws of as many as four other classes, viz. : laws providing for—

- (1) taking over the management of any property by the State for a limited period.
- (2) Amalgamation of two or more corporations.
- (3) Extinguishment or modification of rights of persons interested in corporations.
- (4) Extinguishment or modification of rights accruing under any agreement, lease or license relating to minerals.

So, after the amendment, no law having any of these objects, subject to limitation laid down in each sub-clause, shall be open to challenge on the ground of contravention of Articles 14, 19 or 31.

The definition of word 'estate' includes the interests of intermediaries including those of "raiats and under-raiats". The article has been given retrospective effect. It has validated the Bihar Land Reforms Act 1950, *ab initio*.

The Supreme Court in *Atma Ram v. State of Punjab* (c), held that this Article is to be liberally construed but it also held in *Kochuni v. State of Kerala* (d), that liberal construction cannot go to the length of over reaching the object of the Act so as to authorise in making law regulating *inter se* the rights of a proprietor in his estate and the junior members of his family, besides in the absence of such purpose as of effecting agrarian reform, transfer of the interest in an estate belonging to a private person to another person, will not be valid.

A challenge on the ground of contravention of Articles other than Arts. 14, 19 and 31 is not precluded by Art. 31-A after the amendment e. g., authorising State management of the property of a Mutt, were held to infringe the provisions of Arts. 25-26 (e). This Article precludes an attack on the ground of absence of public purpose, (f). Since application of Art. 31 (2) is excluded by Art. 31-A, a law which comes under Art. 31-A also cannot be challenged as a colourable legislation on ground of absence of any provision for compensation, (g).

What can be challenged.—Only in case of contravention of Articles 13, 14, 19 or 31 justiciability of a law which comes under Article 31-A is debarred, otherwise it does not protect contravention under any other article, (h). Legislative incompetence is also a ground of attack. It is open to the Court to examine whether the impugned law is in 'pith and substance' a law for acquisition within the meaning of Entry 42 of List III as amended or for the 'extinguishment' or 'modification' of any rights in an estate, whether it relates to an 'estate' or 'rights in an estate'. After the Constitution (Fourth Amendment) Act, 1955 'public purpose' having been made an express condition,

(c) *Atma Ram v. State of Punjab*, A. I. R. 1959 S. C. 519.

(d) *Kochuni v. State of Kerala*, A. I. R. 1960 S. C. 1080.

(e) *Commr. of H. R. E. Board v. Lakshmindra*, (1954), S. C. R. 1005.

(f) *Amar Singh v. State of Rajasthan*, (1955) 2 S. C. R. 303 ; *State of Bihar v. Rameswar*, A. I. R. (1961) S. C. 1649 C. A. 27/60.

(g) *State of Bihar v. Rameswar*, A. I. R. (1961) S. C. 1649 (C. A. 27/60).

(h) *Commissioner H. R. E. v. Lakshmindra* (1954), S. C. R. 1005.

it would be wrong to suggest that 'public purpose' still continues to be an essential condition as was held in *Kameswar's case* (i). It is also open to court to consider whether the impugned law is one for agrarian reform or not (j).

Intermediaries.—The tenure holders, raiyats, under-raiyats etc., were introduced into the definition to specifically include these persons even though they were not intermediaries and that the words 'or other intermediaries' occurring at the end do not qualify the words 'raiyyat' and 'under-raiyats' (k).

Article 31-B of the Constitution.—Article 31-B was added to the Constitution (First Amendment) Act 1951 with retrospective effect and validates all Acts that are included in the 9th Schedule of the Constitution *ab initio* even though an Act might have contravened the provisions of S. 299 of the Government of India Act, 1935, (l). But it may be noted that this Article is void with prospective effect from 27-2-67 in view of *Golak Nath v. State of Punjab* (m).

Object and Scope.—To override any decision of a Court or tribunal to the effect that any of the Acts included in the Ninth Schedule of the Constitution is void for contravening any of the fundamental rights, Art. 31-B was inserted.

Art. 31-B includes Acts which relate to properties other than 'estates' while Art. 31-A is confined to 'estates'.

This Article stands independent of Art. 31A and validates certain Acts included in said Ninth Schedule which has been enlarged by the Constitution (Fourth) Amendment Act 1955. In *Visheswar v. State of M. P.* (n), it has been held that the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 is validated by being specifically included in the Ninth Schedule although Malguzari lands affected by it are not 'estates' within meaning of Art. 31-A(2).

The validity of these Acts cannot be challenged on the ground of want of public purpose (o), or for want of provision for compensation of Art. 19, (p), or for contravention of Art. 19, (q).

The protection given by Art. 31-B applies only to the Acts in the Ninth Schedule as they stood at the date when the Constitution (First) Amendment Act 1951 was enacted. Subsequent amendment of any of the Acts are not protected and they must be consistent with the fundamental rights referred

(i) *State of Bihar v. Kameswar* (1952) S. C. R. 889, see also *State of Bihar v. Rameswar*, A. I. R. (1961) S. C. 1649 (C. A. 27/60).

(j) *Kochuni v. State of Kerala*, A. I. R. 1960 S. C. 1080.

(k) *Surendra v. State of W. B.* 1958 Cal. 96 confirmed in *State of Bihar v. Rameswar*, A. I. R. (1961) S. C. 1949 (C. A. 27/60).

(l) *Dhirubha v. State of Bombay*, (1955) 1 S. C. R. 691 ; *State of U. P. v. Brijendra*, A. I. R. 1961 S. C. 14 : (1961) 1 S. C. R. 362.

(m) *Golak Nath v. State of Punjab*, A. I. R. 1967 S. C. 1643.

(n) *Visheswar v. State of M. P.* (1962) S. C. R. 1020.

(o) *Suryopal v. State of U. P.* (1952) S. C. R. 1056.

(p) *Sarwarlal v. State of Hyderabad*, A. I. R. 1960 S. C. 862.

(q) *Chitmanlal v. State of Bombay*, A. I. R. 1954 Bom. 397 ; *State of West Bengal v. Nabakumar*, A. I. R. 1961 S. C. 16.

to in Part III of the Constitution e. g. in *Sri Ram v. State of Bombay* (r), it was held that the amendment in the Bombay Tenancy and Agricultural Lands, Act 1948 made in 1952 contravened Art. 19 (1) (f) and was not saved by Art 31-A and so void.

Effect of Golak Nath's Case

(A. I. R. 1967 S. C. 1643)

By the Constitution (First Amendment) Act, 1951 the amendments relevant for the purpose of this Act are made in Art. 19 by addition of Cl. (2), and in Art. 31 by addition of Cl. 31-A and 31-B with addition of Ninth Schedule (declaring that none of the Acts and Regulations specified in this Ninth Schedule shall be deemed to be void for abridging any of the fundamental rights etc.).

By Constitution (Fourth Amendment) Act, 1955 Clauses (2) and (2A) are added to Article 31 and in Article 31-A, Clause (1) is substituted by a new Clause (1) with further additions in the Ninth Schedule.

By virtue of this decision, there can be no further promulgation of laws abridging the fundamental rights either by the Centre or by the State including them in the Ninth Schedule of the Constitution or otherwise. But the already existing laws and those that are already existing in the said schedule shall remain valid but no amendment for abridging further fundamental rights in the said existing laws shall be allowed. So all laws dealing with acquisition of land and compensation thereon shall henceforth be based on Art. 31, 31A and 31B of the Constitution as they originally stood. The effect is that compensation should be proper and just equivalent and adequacy of same can be challenged. Case laws already decided up till now, on the effects of abridgement of fundamental rights enshrined in Part III of the Constitution will hold good and will be immune from challenge only when they relate to any of the laws included in the Ninth schedule otherwise not. The Ninth Schedule has become exhaustive.

Legislations included in the Ninth Schedule :—

1. The Bihar Land Reforms Act, XXX of 1950.
2. The Bombay Tenancy and Agricultural Lands Act, LXVII of 1948.
3. The Bombay Maleki Tenure Abolition Act, LXI of 1949.
4. The Bombay Taluqdari Tenure Abolition Act, LXII of 1949.
5. The Panch Mahals Mehwasli Tenure Abolition Act, LXIII of 1949.
6. The Bombay Khoti Abolition Act of 1950.
7. The Bombay Pargana and Kulkarni Watan Abolition Act LX of 1950.
8. The Madhya Pradesh Abolition of Proprietary Rights (Estate Mahals, Alienated Lands) Act, 1 of 1951.
9. The Madras Estates (Abolition and Conversion into Ryotwari) Amendment Act, XXVI of 1948.
10. The Madras Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1 of 1950.

(r) *Sri Ram v. State of Bombay*, A. I. R. 1959 S. C. 459.

11. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951.
12. The Hyderabad (Abolition of Jagirs) Regulation, 1358 F. (No. LXIX of 1358 Fasli).
13. The Hyderabad Jagirs (Commutation) Regulation, 1359 F. (No. XXV of 1359 Fasli).
14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act XXXVIII of 1950.
15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act XXVI of 1948.
16. The Resettlement of Displaced Persons (Land Acquisition) Act, LX of 1948.
17. Sections 52-A to 52-G of the Insurance Act, IV of 1938 as inserted by Section 42 of the Insurance (Amendment) Act, XLVII of 1950.
18. The Railway Companies (Emergency Provisions) Act, LI of 1951.
19. Chapter III-A of the Industries (Development Regulation) Act LXV of 1951 as inserted by Section 13 of the Industries (Development and Regulation) Amendment Act, XXVI of 1953.
20. The West Bengal Land Development and Planning Act XXI of 1948 as amended by West Bengal Act, XXIX of 1951.

The Constitution (Seventeenth Amendment) Act, 1964

An Act further to amend the Constitution of India (10-6-1964).

Be it enacted by Parliament in the fifteenth year of the Republic of India as follows :—

1. This Act may be called the Constitution (Seventeenth Amendment) Act, 1964.

2. In article 31-A of the Constitution,—

(i) in clause (1), after the existing proviso, the following proviso shall be inserted namely :—

“Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof”.

(ii) in clause (2) for sub-clause (a) the following sub-clause shall be substituted and shall be deemed always to have been substituted, namely :—

(a) The expression ‘estate’ shall in relation to any local area have the same meaning as that expression or its local

equivalent has in existing law relating to land tenures in force in that area and shall also include—

- (i) any Jagir, inam or muafi or other similar grant and in the States of Madras and Kerala any Janmam right ;
- (ii) any land held under ryotwari settlement.
- (iii) Any land held or let for purposes of agriculture or for purpose ancillary thereto including waste land, forest land, land for pasture or sites or buildings and other structures occupied by cultivators of land, agricultural labourers, and village artisans ;

3. In the Ninth Schedule to the Constitution after entry 20, the following entries shall be added, namely :—
21. The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961, (Andhra Pradesh Act, X of 1961).
22. The Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands (Validation) Act, 1961, (Andhra Pradesh Act, XXI of 1961).
23. The Andhra Pradesh (Telengana Area) Ijara and Kowli Land Cancellation of Irregular Pattas and Abolition of Concessional Assessment Act, 1961, (Andhra Pradesh Act, XXXVI of 1961).
24. The Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act, IX of 1961).
25. The Bihar Land Reforms (Amendment) Act, 1953, (Bihar Act, XX of 1954).
26. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962), except section 28 of this Act.
27. The Bombay Taluqdari Tennure Abolition (Amendment) Act, 1954 (Bombay Act 1 of 1955).
28. The Bombay Talukdari Tenure Abolition (Amendment) Act, 1957 (Bombay Act, XVIII of 1958).
29. The Bombay Inams (Kutch Area) Abolition Act, 1958, (Bombay Act, XCVIII of 1958).
30. The Bombay Tenancy Agricultural Lands (Gujarat Amendment) Act, 1960 (Gujarat Act, XVI of 1960).
31. The Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act, XXVII of 1961).
32. The Sagbara Mehwassi Estate (Proprietary Rights Abolition etc.), Regulations, 1962 (Gujarat Regulation 1 of 1962).
33. The Gujarat Surviving Alienation Abolition Act, 1963, (Gujarat Act, XXXIII of 1963) except in so far as this Act relates to an alienation referred to in sub-clause (d) of clause (3) of section 2 thereof.
34. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act, XXVII of 1961).
35. The Hyderabad Tenancy and Agricultural Laws (Re-enactment, Validation and Further Amendment) Act, 1961 Maharashtra Act, XLV of 1961).

36. The Hyderabad Tenancy and Agricultural Lands Act, 1950, (Hyderabad Act, XXI of 1950).
37. The Jenmikaran Payment (Abolition) Act, 1960 (Kerala Act, III of 1961).
38. The Kerala Land Tax Act, 1961 (Kerala Act XIII of 1961).
39. The Kerala Land Reforms Act, 1963, (Kerala Act, 1 of 1964).
40. The Kerala Land Reforms Act, 1963, (Kerala Act, 1 of 1964).
40. The Madhya Pradesh Land Revenue Code, 1959 (Madhya Pradesh Act, XX of 1959).
41. The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (Madhya Pradesh Act, XX of 1960).
42. The Madras Cultivating Tenants Protection Act, 1955 (Madras Act, XXV of 1955).
43. The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Madras Act, XXIV of 1956).
44. The Madras Occupants of Kudiyruppu (Protection from Eviction) Act, 1961 (Madras Act, XXXVIII of 1961).
45. The Madras Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Madras Act LVII of 1961).
46. The Madras Land Reforms (Fixation of Ceilings on Land) Act, 1961 (Madras Act, LVIII of 1961).
47. The Mysore Tenancy Act, 1952 (Mysore Act, XIII of 1952).
48. The Coorg Tenants Act, 1957 (Mysore Act XIV of 1957).
49. The Mysore Village Offices Abolition Act, 1961 (Mysore Act, XIV of 1961).
50. The Hyderabad Tenancy and Agricultural Lands (Validation) Act, 1961, (Mysore Act, XXXVI of 1961).
51. The Mysore Land Reforms Act, 1961 (Mysore Act X of 1962).
52. The Orissa Land Reforms Act, 1960 (Orissa Act XVI of 1960).
53. The Orissa Merged Territories (Village Offices Abolition) Act, 1963 (Orissa Act, X of 1963).
54. The Punjab Security Land Tenures Act, 1953 (Punjab Act, X of 1953).
55. The Rajasthan Tenancy Act, 1955 (Rajasthan Act, III of 1955).
56. The Rajasthan Zamindari and Biswedari Abolition Act, 1959 (Rajasthan Act, VIII of 1959).
57. The Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (Uttar Pradesh Act, XVII of 1960).
58. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (Uttar Pradesh Act, 1 of 1961).
59. The West Bengal Estates Acquisition Act, 1953 (West Bengal Act, 1 of 1954).
60. The West Bengal Land Reforms Act, 1955 (West Bengal Act, X of 1956).
61. The Delhi Land Reforms Act, 1954 (Delhi Act, VIII of 1954).
62. The Delhi Land Holdings (Ceiling) Act, 1960 (Central Act, 24 of 1960).
63. The Manipur Land Revenue and Land Reforms Act, 1960 (Central Act, 33 of 1960).

64. The Tripura Land Revenue and Land Reforms Act, 1960 (Central Act, 43 of 1960).

Explanation.—Any acquisition made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act, III of 1955) in contravention of the second proviso to clause (1) of article 31-A shall, to the extent of the contravention, be void.

Conclusion.—The impact of the Constitutional provisions particularly of the effect of the decision in Golak Nath's case, discussed above on the Land Acquisition Act and other similar Central or State Acts is far reaching and has brought revolutionery changes. There is no doubt that Art. 226 of the Constitution has given immense power to the Court to bring many provisions of several Acts under the fold of its justiciability and to strike down any law that contravened the fundamental rights guaranteed by Part III of the Constitution but yet this power of the Courts is always under the vigilance of the appropriate authorities who try to keep the power under check by frequent amendments in the Constitution itself. Any way the Land Acquisition Act should be read including the old and recent decisions in the light of observations made above and in view of Golak Nath's case.

2. *(Repeal and Saving)*—*Repealed partly by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II, and partly by the Repealing Act, 1938 (I of 1938) s. 2 and Sch.*

Notes

Sec. 2 of the L. A. Act, 1870 ran as follows :—

“2. On and from such day Act No. VI of 1857 (*for the acquisition of land for public purposes*), Act No. II of 1861, (to amend Act, VI of 1857) and Act, XXII of 1863, (*to provide for taking land for works of public utility to be constructed by private persons or companies, and for regulating the construction and use of works on land so taken*) shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders or contracts shall be read as if made to this Act.”

‘Sec. 2 of Act, 1 of 1894 ran as follows :—

2 (1). The Land Acquisition Act of 1870 and section 4 of the Punjab Courts Act, 1884, are hereby repealed.

(2). But all proceedings commenced, officers appointed or authorised, agreements published and rules made under the Land Acquisition Act, 1870, shall as far as may be, be deemed to have been respectively commenced appointed or authorised, published and made under this Act.

(3). Any enactment or document referring to the Land Acquisition Act, 1870, or to any enactment thereby repealed shall, so far as may be, be considered to refer to this Act or to the corresponding portion thereof.”

Repeal of S. 2.—By section 3 and Sch. II of the Repealing and Amending Act X of 1914 passed by the Governor-General of India-in-Council, sec. 2(1) which ran as follows :—“The Land Acquisition Act of 1870 and section, 74 of the Punjab Courts Act, 1884, are hereby repealed,” has been repealed. The word “But” with which sec. 2(2) began has also been repealed by section

3 and Sch. II of the Repealing and Amending Act, X of 1914. Again by section 2 and Sch. 1 of the said Repealing and Amending Act, the words and figures "Land Acquisition Act, 1870" in sub-sections (2) and (3) above have been substituted for the words "said Land Acquisition Act". Again by the Repealing Act of 1938 so much of section 2 as has not been repealed has been repealed.

Retrospective effect of the Act.—The Section provides that Act 1 of 1894, will, since the day it has come into force, have the effect of governing all proceedings commenced under Act X of 1870 and validates all proceedings, agreements and rules etc., made and published under Act X of 1870 as if made under Act 1 of 1894. Sub-section (3) provides that the words : "The Land Acquisition Act, 1894". shall be substituted in place of the words "The Land Acquisition Act, 1870", wherever and whenever they occur in any enactment or document, the Land Acquisition Act, 1870 having been repealed by Act of 1894.

Definitions

3. In this Act, unless there is something repugnant in the subject or context,—

- (a) the expression "Land" includes benefits to arise out of land; and things attached to the earth or permanently fastened to anything attached to the earth ;
- (b) The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act ; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land :
- (c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the ¹[appropriate Government] to perform the functions of a Collector under this Act :
- (d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the ¹[appropriate Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act :
- (e) the expression "Company" means a company registered Under the ²[Indian Companies Act, 1882], or under the (English) Companies Act, 1862 to 1890, or incorporated by an Act of

¹ Substituted by the A. O. 1950, for "Provincial Government".

² See now the Companies Act, 1956 (1 or 1956):

Parliament ³[of the United Kingdom] or ⁴[by an Indian law], or by Royal Charter or Letters Patent ⁵[and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912] : ⁶[or any other law relating to Co-operative Societies for the time being in force in any State].

- ³(e) the expression "appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government] :
- (f) the expression "public purpose" includes the provision of village-sites in districts in which the ³[appropriate Government] shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision : and
- (g) the following persons shall be deemed persons "entitled to act", as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested, could have acted if free from disability ;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age ; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted ;

Provided that—

- (i) no person shall be deemed "entitled to act" whose interest in the subject matter shall be shown

³ Inserted by the A. O. 1950.

⁴ Substituted by the A. O. 1937 for "of the G. G. in C."

⁵ Added by Act 17, of 1919, S. 2.

⁶ Added by L. A. (Amendment) Act 1962 (31 of 1962, S. 2).

- to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act ;
- (ii) In every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof ;
 - (iii) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis* apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act ; and
 - (iv) no person "entitled to act" shall be competent to receive the compensation money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase money on a voluntary sale.

State Amendments

Clause (a)—

1. *Maharashtra—By Bombay Act, XXVII of 1950, S. 2 :—*
 "After Clause (a) insert :—
 "(aa) the expression 'arable land' includes garden land".
 (See under Part III, Chapter IV-A, Maharashtra).
2. *Gujarat—Same as Maharashtra.*
And by the Land Acquisition (Maharashtra Amendment and Validation of Certain Proceedings for Acquisition of Lands) Act No. 24 of 1965 : [See under Part III, Chapter IV-A Maharashtra (2)].
3. *Mysore—By the Land Acquisition (Mysore Extension and Amendment) Act, 17 of 1961.*
 (See under Part III, Chapter X, Mysore).

Clause (b)—

1. *West Bengal—By W. B. Act, XXX of 1963, S. 3 :—*
 [See under Part III Chapter XV, West Bengal (1)].

Clause (c)—

1. *Bihar—By Bihar Act, XI of 1961, S. 3(i).*
 [See under Part III, Chapter III, Bihar (1)].
2. *Maharashtra and Gujarat—By Bombay Act, VIII of 1958, S. 3(4) and Notification No. LAQ 2558/V dated 29-9-58 :—*
 "In its application to the whole State of Bombay excluding the transferred territories in clause (c) after the words "appropriate Government" insert the words "or by the Commissioner."

3. *Mysore*—By *Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961*.
(See under Part III, Chapter X, Mysore).
4. *Uttar Pradesh*—By U. P. Act XXX of 1956 S. 3^{*} Sch. II :—
“Omit the words ‘a Deputy Commissioner and’ from S. 3 cl. (c).”

Clause (d)—

1. *Maharashtra*—By *Maharashtra Act, XXXVIII of 1964, Sec. 3* :—
[See under Part III, Chapter IV-A, Maharashtra (2)].
2. *Maharashtra and Gujarat*—By *Bombay Act, XXX of 1953, S. 2(1)* :—
In Clause (d) add the the following at the end :—
“and shall in relation to any proceedings under this Act include the Court of Civil Judge (Senior Division) to which the principal Civil Court may transfer any such proceedings”.
3. *Madhya Pradesh*—By C. P. and Berar Act, VII of 1949, S. 2.—
In Clause (d) after the word ‘Court’ insert the words “except in sub-section (2) of S. 18”.
4. *Mysore*—By *Mysore Act, 17 of 1961*.
(See under Part III, Chapter X, Mysore).
5. *Vidarbha*—The amendment made by C. P. and Berar Act, VII of 1949, S. 2 applies.
6. *West Bengal*—By *The Bengal Act, II of 1934, S. 3* :—
[See under Part III, Chapter XV, West Bengal (1)].

Clause (e)—

1. *Andhra Pradesh*—The *Andhra Pradesh Act, XX of 1959, S. 5* :—
[See under Part III, Chapter 1, Andhra Pradesh (1)].
2. *Calcutta*—By *Calcutta Improvement Act V, of 1911, S. 71, Sch. para 1* :—
[See under Part III, Chapter XV, West Bengal (2)].
3. *Bihar (Patna)*—By the *Bihar Act, XXXV of 1951, Sec. 71, Sch. Para 1* :
[See under Part III, Chapter III, Bihar (7)].
4. *Madhya Pradesh (Nagpore)*—By the C. P. Act, XXXVI of 1936, Sch. Cl. (i) :—
After clause (e) of S. 3 the following shall be deemed to be inserted, namely :—
“(ee) the expression ‘local authority’ includes the trust constituted — under the Nagpore Improvement Trusts Act, 1936”.
5. *Mysore*—By *Mysore Act, 17 of 1961*.
(See under Part III, Chapter X, Mysore).
6. *Punjab*—By the *Punjab Act, IV of 1922, S. 59 and Sch. Cl. (i)* :—
[See under Part III, Chapter XII, Punjab (4)].
7. *Uttar Pradesh*—By *The U. P. Act, II of 1959, S. 376 and Sch. II, Sec. 1* :—
After clause (e) of S. 3 the following shall be deemed to be inserted, namely :—
“(ee) the expression ‘local authority’ includes a Mahapalika constituted under the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959”.

Clause (ee)—

Madras—By Madras Act, 37 of 1950, S. 73 and Sch. Para 1 :—

[See under Part III, Chapter IX, Madras (1)].

Clause (f)—

1. *Bihar*—By the Bihar Act, XXXIV of 1959, Sn. 2(ii) and Bihar Act, II of 1961, Sec. 3(i) :—

For clause (f) substitute the following clause namely :—

“(f) the expression ‘public purpose’ includes provision for or in connection with—

- (i) Sanitary improvements of any kind, including reclamation ;
- (ii) the laying out of village sites or townships or the extension, planned development or improvement of existing village sites or townships and”.

2. *Madhya Pradesh and Vidarbha*—By the C. P. and Berar Act, XX of 1949 Sn. 3, Sch. Para 1 :—

[See under Part III, Chapter VIII, Madhya Pradesh (6)].

3. *Maharashtra and Gujarat*—By the Bombay Act, XXXV of 1953, S. 2(2) :—

In clause (f)—

- (1) after the word “includes” insert the brackets and figure “(1)”.

- (2) after the words ‘such provisions’ insert the following :—

“(2) and the acquisition of land for purposes of development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale, with the object of securing further development”.

4. *Mysore*—By Mysore Act, 17 of 1961.

(See under Part III, Chapter X, Mysore).

5. *Uttar Pradesh*—By the U. P. Act, XXII of 1954, S. 2 and Schedule, Para 1 :—

In Section 3 for clause (f) substitute the following :—

“(f) the expression ‘public purpose’ including provision for or in connection with—

- (i) sanitary improvement or any kind including reclamation ;
- (ii) the laying out of village sites, townships or the extension, planned development or improvement of existing village sites or townships ;
- (iii) the settlement of land for agriculture with the weaker section of the people, and”

Clause (g)—

1. *Madhya Pradesh*—The M. P. Act V of 1959, S. 3 for Bhopal area :—
After clause (g) of S. 3 insert the following :—

(h) the expression ‘Bhopal area’ shall have the same meaning as assigned to it in the Land Acquisition M. P. Amendment Act, 1959. ‘Bhopal area’ comprises the area comprised within the municipal Units of Bhopal town and area extending to ten miles beyond such limits (vide M. P. Act, V of 1959, Sec. 2).

2. *Mysore*—By Mysore Act, 17 of 1961, See under Part III, Chapter X, Mysore.
3. *Uttar Pradesh*—By the U. P. Act, XXII of 1952, S. 2 and Schedule, Para 1 :—

In Section 3 after clause (g) add the following new clauses :—

“(h) Land Reforms Commissioner means the Land Reforms Commissioner appointed by the State Government”.

4. *Maharashtra and Gujarat*—Section 3-1A in Bombay Act, VII of 1958 :—

After Section 3 insert the following new section, namely—

“Section 3-1A—Powers to be exercised by Commissioner by or under the Act—The power conferred on the Commissioner by or under this Act shall be the powers exercisable by him in relation to the acquisition of land for those purposes only for which the State Government is the appropriate Government.”

Section 3A, 3B in the Bombay Act, XX of 1945 Sn. 2 and in the Bombay Act, X of 1948, Sn. 2—

After Part I of the Land Acquisition Act of 1894 insert the following namely :—

“PART 1A”

Preliminary Survey

S. 3A—Preliminary Survey of lands and powers of officers to carry out survey—

For the purpose of enabling the State Government or the Commissioner to determine whether land in any locality is needed or is likely to be needed for any public purpose, it shall be lawful for any officer of the State Government in the Public Works Department, or any other officer either generally or specially authorised by the State Government in this behalf or as the case may be, any officer authorised by the Commissioners and for his servants and workmen—

- (i) to enter upon and survey and take levels of any land in such locality ;
- (ii) to work such levels ;
- (iii) to do all other acts necessary to ascertain whether the land is adapted for such purpose ; and
- (iv) where otherwise the survey cannot be completed and the levels taken to cut down and clear away any part of any standing crop, fence or jungle ;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof ; without previously giving such occupier at least seven days' notice in writing of his intention to do so).

3-B. Payment for damage—the officer of the State Government in the Public Works Department and any other officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to sufficiency of the amounts so paid

or tendered shall at once refer the dispute to the decision of the Collector or other Chief Revenue Officer of the District and such decision shall be final."

5. *Guzarat*—By the Land Acquisition (Guzarat Unification and Amendment) Act 20 of 1965.

[See under Part III, Chapter IV-B, *Guzarat* (2)].

Notes

Sec. 3 of the old L. A. Act X of 1870 ran as follows :—

"Interpretation clause 3 in this Act—

The expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act.

The expression 'Collector' means the Collector of a District and includes a Deputy Commissioner and any officer especially appointed by the Local Government to perform the functions of a Collector under this Act.

The expression 'Court' meant the Regulation Provinces, British Burma and Sindh, a principal Civil Court of original jurisdiction and in the Non-Regulation Provinces other than British Burma and Sindh, the Court of a Commissioner of a Division, unless when the local Government has appointed (as it is hereby empowered to do) either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a judge under this Act, and then the expression 'Court' means the Court of such officer.

The expression "Company" means a company registered under the Indian Companies Act, 1866, or formed in pursuance of an act of Parliament or Royal Charter or Letters Patent.

And the following persons shall be deemed persons 'entitled to act' as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any case, and that to the same extent as the persons beneficially interested could have acted if free from disability ;

a married woman, in cases to which the English law is applicable, shall be deemed the person to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age ;

the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted.

Clause (a) : The Definition of "land" in the Act is not exhaustive.—When in an interpretation clause, it is stated that a certain term "includes" so and so, the meaning is that the term retains its ordinary

meaning and the clause enlarges the meaning of the term and makes it include matters which the ordinary meaning would not include, (a). The definition of the word "land" given in the Act is not exhaustive. The use of the inclusive verb "includes" shows that the Legislature intended to lump together in one single expression, viz., "land" several things or particulars such as the soil, the buildings on it, any charges on it and other interests in it which all have a separate existence and are capable of being dealt with either in a mass or separately as exigencies of each case arising under the Act may require, (b).

The opening words of the section "unless there is anything repugnant in subject or context" lay down that the definition given will not apply if the word appears to be repugnant in subject or context.

Though the term "land" in sec. 3(a) of the Act is defined as including things attached to the earth, the Act does not contemplate the acquisition of things attached to the land without the land itself. It is only the land including the rights which arise out of it and not merely some subsidiary right which is capable of acquisition under the Act, (c). The taking of property which merely injures a franchise but does not interfere with the exercise of it, does not entitle the owner of the franchise to compensation for damage to the franchise.

Land and Ferry rights.—The mere construction of a railway bridge across a river whereby the profits of the ferry are reduced, does not entitle the owner of the ferry to claim damages. Where, however, lands on both banks of a river which were used as landing places for the ferry were acquired for the purpose of a railway bridge, the access to the river and with it the exercise of the franchise was destroyed and the owner in consequence was entitled to compensation, (d). It is only land including the right arising out of it, but not rights detached from the land that can be acquired under the Act. The incorporeal rights detached from the land out of which they arose were not subjects for acquisition under the Land Acquisition Act, (e).

Land—What it means and includes.—In England section 3 of the Lands Clauses Act, 1845, defines lands as "messuages" lands, tenements, hereditaments of any tenure." The term 'messuages, is substantially equivalent to a house. "Tenement" is a large word used to pass not only lands and other inheritances which are holden, but also offices, rents, commons, *profits a prendre* out of lands and the like wherein a man hath any possible tenement and whereof he is seised—*ut de libro tenemento*. But hereditament is the

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- (a) *The Official Assignee, Bombay v. Firm of Chandulal Chimanlal*, 76 Ind. Cas. 657.
 - (b) In the Matter of *Nasibun*, 8 Cal. 534 ; *Government of Bombay v. Esufally Salebhoy*, 34 B. 618 : 12 Bom. L. R. 34 : 5 I. C. 621. *Ramgopal v. P. K. Banerjee*, A. I. R. 1949 A. 433.
 - (c) *Dasarath Sahu v. Secretary of State for India*, 35 I. C. 97.
 - (d) *Maharaja Sir Rameswar Singh v. Secretary of State*, 34 Cal. 470 : 11 C. W. N. 355 : 5 C. L. J. 669 : *Collector of Dinajpur v. Girijanath Roy*, 25 C. 346.
 - (e) *Babujan v. Secretary of State*, 4 C. L. J. 256 : *Raja Shyam Chunder v. Secretary of State*, 35 Cal. 525 : 12 C. W. N. 569 ; 7 C. L. J. 445. But see *Anand Behari & Anr. v. State of Orissa & Anr.* A. I. R. (1956) S. C. 17, under Orissa Estate Abolition Act 1951.

largest of all in that kind, for whatsoever may be inherited is an hereditament, be it corporeal or incorporeal, real or personal or mixed. Blackstone in his Commentaries (Vol. 2 p. 16) says that "incorporeal hereditaments are principally of ten sorts—advowsons, tithes, commons, ways, offices, dignities, franchise, corrodies or pensions, annuities and rents", (f). The word "land" is used in the same sense as "immovable property", in sec. 3(25) of the General Clauses Act X of 1897. But in section 2(b) of the Indian Registration Act, XVI of 1908, and sec. 3 of the Transfer of Property Act, IV of 1882 (as amended by Act XX of 1929) "immovable property" has been defined as not to include "standing timber, growing crops or grass". It follows, therefore, that for the purposes of acquisition under the Land Acquisition Act, standing timber, growing crops or anything, rooted in the earth as in the case of trees and shrubs or anything imbedded in the earth as in the case of walls and buildings or attached to anything so imbedded for the permanent beneficial enjoyment of that to which it is attached, cannot, be excluded from being taken into consideration though under the Transfer of Property Act and the Registration Act they are not to be considered as included within the term "land" for the purposes of transfer and registration, (g).

Land includes mines, trees and standing crops, —Lands are the subject matter of the law of compensation. Mines according to English law are included under "land" and if required may be purchased in the first instance either by agreement or compulsorily, (h). In India lands can be acquired without the acquisition of the mines underneath, *vide* Land Acquisition (Mines) Act, XVIII of 1885, *infra*. But under the Coal Bearing Areas (Acquisition and Development Act (20) of 1957, the Supreme Court held that the expression 'unworked land' occurring in the preamble should be given its ordinary meaning, that is, land which was not being worked at the time of notification under the Act, which would include dormant mines and that the absence of provision in Sn. 13 of the Act, providing for compensation for mineral right, cannot by itself justify the conclusion that the Act was intended to apply to virgin land only. The land includes all that lies beneath the surface, (i). Compensation is specifically provided in the Act and it cannot be called in question on ground of inadequacy of the compensation. But if the compensation is illusory, it can be said that the legislature committed a fraud on power and therefore the law is bad, (j).

Land includes trees, —Trees are things attached to the earth and are thus included in the definition of "land" in section 3(a) of the L. A. Act; and this definition must be applied in the construction of section 23 of the Act. The value of such trees as are on the land, when the declaration is made, under section 6 is included in the market value of the land on which the

(f) *In re Brewer*, (1876) 1 Ch. D. 409.

(g) *Province of Sind v. Harkishendas*, 1 L. R. 1940 K. 396 : 178 I. C. 714 : 1940 A. I. R. (S) 58.

(h) *Holiday v. Mayor of Wakefield*, (1891) A. C. 81. *Smith v. Great Western Railway Co.*, (1887) 3 App. Case, 165. *Eyrington v. Metropolitan Dt. Ry. Co.*, (1882) 19 Ch. D. 559.

(i) *Burrakar Coal Co. Ltd. v. The Union of India*, 1961 S. C. A. (II), 523.

(j) *P. Vajravelu Mudaliar v. Spl. Dy. Coll., Madras*, 1964 (S. C.), 903.

allowance of 15 per cent is to be calculated under section 23(2) of the L. A. act, (k). Fruit-bearing trees likely to bear fruit for a number of years, e. g., mango trees, should also be valued at 20 years annual rental, (l). But where a person whose land was acquired under the L. A. Act asked the same to be valued as vacant land to be used for the purpose of erecting buildings, he could not at the same time claim the value of the trees on it on the footing that they would still remain there, the claims being inconsistent. The proper value of the trees would be their value as timber after they have been cut down, (m). In the case of cocoanut trees it was thought reasonable to fix the market value at ten years' purchase on the average income of the yielding trees plus the value of the timber of the non-yielding trees, (n). Land includes trees, buildings and also standing crops, (o). Bamboos have been held to be trees, (p).

Land includes Easements.—So far as the definition clause is concerned, lands, as they are defined, include easements, (q). The Lands Clauses Act, 1845, section 68, gives full compensation to the owner for interference with an existing easement, such interference being an injury to the dominant tenement, (r). The Land Acquisition Act 1 of 1894 includes easements or similar rights under the definition of lands and authorises the Government of purchasing or taking easements compulsorily. When an existing easement is interfered with in the execution of works authorised under compulsory powers, the owner should in all cases claim compensation for injury to the dominant tenement, (s). Land taken under the Act is taken discharged of all easements and the loss of easements must be taken into account in assessing compensation for injurious affection, (t). The word "incumbrance" in sec. 16 includes easements. Where, therefore, land is acquired by Government under the provisions of the L. A. Act, the land vests absolutely in the Government free from all existing easements, (u). "A person shall be deemed to be interested in land if he is interested in an easement affecting the land". *Vide* sub-clause (b). When Government is seeking to acquire land which is subject to an easement it has to pay

(k) *Sub-Collector, Godavari v. Seragam Subbarayadu.*, 30 M. 151.

(l) *Rajammal v. Headquarter Deputy Collector, Vellore*, 25 Ind. Cas. 393.

(m) *Secretary of State v. Duma Lal Shaw*, 13 C. W. N. 487.

(n) *Shunmuga Velayuda Mudaliar v. Collector of Tanjore*, 23 M. L. W. 336 ; (1926) M. L. W. 235. : A. I. R. (1926) (M) 945.

(o) *Province of Sind v. Harkishendas*, I. L. R. (1940), Kar. 396 ; 22 Cal. 877 (standing crops).

(p) *Rameshwar Singh v. Basudeb Singh*, 60 I. C. 521.

(q) *Great Western Railway Co. v. Swindon Rail Co.*, (1884) 9 App. Cas. 787 ; *In Metropolitan District Company and Cosh*, (1880) 13 Ch. D. 607.

(r) *Thicknessee v. Lancaster Canal Co.*, 4 M. & W. 472.

(s) *Clark v. School Board for London*, 1874 L. R. 9 Ch. 120 ; *Badham v. Marria*, (1882) 52 L. J. Ch. 237. *Swainston v. Firm and Metropolitan Board of Works*, (1883) 52 L. J. Ch. 235 ; 31 W. R. 498.

(t) *Taylor v. Collector of Purnea*, 14 C. 423 following *Raja Nilmony Singh Deo v. Rambandhu Rai*, 7 Cal. 388 (P. C.).

(u) *Mitra v. Municipal Committee, Lahore*, 6 L. 329 ; 89 I. C. 658 ; (1925) A. I. R. (L) 523.

compensation to the land owner, that is the owner of the servient tenement and it has got to pay compensation to the owner of the easement, (v).

What is not Easement.—It was held that in order that a representation may operate as an estoppel it must be a representation of an existing fact and not of a mere intention or future promises. It was a statement of what the Improvement Trust was going to do with regard to the land, which was described to be on the boundary of the plots sold, and did not confer any title on the purchasers of the plots sold either by express grant or by implication. Hence no right of easement was created, (w).

Land includes things attached to the earth or permanently fastened to anything attached to the earth e. g., machinaries.—In the expression “permanently fastened to anything attached to the earth” used in the definition of “land” contained in sec. 3(a) of the L. A. Act, 1894, the word “permanently” is used as an antithesis to “temporarily”. An oil-mill plant, which had been on premises for a long period, and consisted of a boiler standing on masonry and built round with masonry and of an engine and other parts all bolted to foundation of masonry or wood, are, therefore “land” for which compensation is payable in proceedings subject to the Act, even if they can be moved for the purpose of repair or inspection, (x). The question whether certain boilers fixed in brick-work and engines, mills and other machinery affixed to the foundation by means of bolts and nuts in certain premises in the city of Calcutta, were “permanently attached to the earth” within the meaning of sec. 3 of the L. A. Act, and it was held by the Privy Council that fastenings were intended to be permanent within the meaning of the definition clause. A thing may be, and very often is, a composite thing made up of parts and if of such a thing there is one part which is actually attached to the earth and there are other parts which are so connected with the part, actually attached as to form with that part, one integral part, then each of those parts as well as the part actually attached to the earth, is ‘attached to the earth’ and is “land” within the meaning of the first part of the definition, (y). The boiler, the engine and all other parts of machinery remained where they were for at least a quarter of a century. They may have been removed in the course of that period for necessary repairs or for inspection, but only to be re-fastened in their original position, as soon as the purpose of temporary removal was accomplished. The word “permanent” means remaining “unremoved” not “unremoveable”.

Land includes Bungalow.—A bungalow is included in the definition of “land” as given in S. 3(a) of the L. A. Act. So where the Government claimed the land as their own and did not propose to pay compensation therefor, but only said that they resumed the land, claim for compensation in respect of the bungalow in it, comes under L. A. Act, (y-1).

(v) *Government of Bombay v. C. S. M. Co.*, 1. L. R. 1942, Bom. 403.

(w) *Hindusthan Co-operative Insurance Society Ltd.*, v. *Secy. of State*, 56 Cal. 989.

(x) *Macleod v. Kikabhai*, 25 Bom. 659 ; 3 Bom. L. R. 426.

(y) *Secretary of State v. Tarak Chandra Sadhukhan*, 54 Cal. 582 (P. C.) : 31 C. W. N. 950 : 45 C. L. J. 589 : 29 Bom. L. R. 953 : 53 M. L. J. 99 : 1927 M. W. N. 436 : 39 M. L. T. 63 : 40 W. N. 735 : 103 I. C. 366 : 1927 A. I. R. (P. C.) 172.

(y-1) *Damodardas v. Secretary of State*, 1938 A. L. J. 1171 ; 1938 A. W. R. 811.

Land includes land covered with water except in the case of natural streams :—Land is not the less land for being covered with water, (z). A pond or piece of water is land covered with water. Land according to the L. A. Act, does not mean merely firm land but also land covered with water, and in estimating the market value of such land, the benefit derived from such water should also be taken into account, (a). Apart from any statute, there can be no right of private property in the running water of a natural stream which passes on the land of other owners. The enjoyment of such water is only usufructuary and not absolute. The right arises not from ownership of the soil under the stream but from the right of access to it which riparian owners have by the law of nature. Facts of nature constitute the foundation of the right and the law recognises and follows it in every part of the stream so that one particular owner cannot claim to appropriate the whole of the water, (b).

Lands exempted from acquisition.—The provisions of the Land Acquisition Act do not cut down the power conferred by section 7 of the Indian Railways Act as amended by section 1 of Act XI of 1896, on a railway company to carry a line of railways across a street subject to the control of their powers by the Governor-General-in-Council and that the construction of the railway line across the street was not an acquisition of immovable property within the meaning of the said section 7 and that the respondents had power under that section to lay the lines without obtaining the consent of the corporation. The statutory authority under section 7 of the Indian Railways Act was established and that the application of section 293 of the City of Bombay Municipal Act or any other enactment was excluded by the words "notwithstanding anything in any other enactment for the time being in force" (c). Therefore, when a railway company wished to lay a railway upon and across a street it was neither necessary nor appropriate to proceed under the Land Acquisition Act for the acquisition of the land, (c). Government lands and generally cantonment lands do not come under 'acquisition'. Places of worship or religious places are not exempted by this Act, but in practice they are exempted under Board's Instructions.

The Government Lands.—The scope and object of the Land Acquisition Act as has been observed were to provide a speedy method for deciding the amount of compensation payable by the Collector, when such amount is disputed, and the person or persons to whom it is payable. The special jurisdiction either of the Collector or the court was never intended to be extended to a case in which the Collector claims the land on behalf of the Government or the Municipality and denies the title of other claimants to the land. Such a position would be inconsistent with the applicability of the Act, for it denies the right of any person to compensation. It seems a

(z) *Reg. v. Leeds and Liverpool Canal Co.*, 7 A. & E. 685.

(a) *Nalinakshya Bose v. Secretary of State*, 5 C. L. J. 62 n.

(b) *B. B. Ry. Co. Ltd., v. Nrisingha*, 47 C. W. N. 130.

(c) *Municipal Corporation of the City of Bombay v. Great Indian Peninsula Railway Co.*, 43 I. A. 310 : 41 B. 291 : 19 Bom. L. R. 48 : 21 C. W. N. 447 : 15 A. L. J. 63 : 38 I. C. 923 : 25 C. L. J. 209 (P. C.).

contradiction in terms to speak of the Collector, as seeking acquisition of land when he asserts that the land is his own, and that no other person has any interest in it, (d).

As has been noted, to acquire a land is not necessarily the same thing as to purchase the right of fee-simple to it, but means the purchase of such interests as clog the right of Government to use it for any purpose they like. The definition given to the word "land" in section 3(a) of the Act, as has been observed, is not exhaustive. The use of the inclusive verb "includes" shows that the Legislature intended to lump together in one single expression, viz. ; "land", several things or particulars such as the soil, the building on it and other interests in it, all of which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the act may require. Government are therefore not debarred from acquiring and paying for only outstanding interest merely because the Act which primarily contemplates all interests as held outside Government, directs that the entire compensation based upon the market value of the whole land must be distributed among the claimants. In such circumstances there is no insuperable objection to adopting the procedure to the case on the footing that the outstanding interests which are the only things to be acquired are the only things to be paid for, (e).

Under the L. A. Act what is acquired is the land which includes all that is stated in Cl. (a) section 3 of the Land Acquisition Act. But in the case of any land with superstructure thereon, in which either the Government have an admitted interest or wherein that interest is a matter of dispute between the claimant interested in the property and the Government, it is open to the Government to acquire the property under the Act. When it comes to a question of determining the market-value of the property acquired and the sum payable as compensation for the property acquired to the person having a limited interest in the property, it is open to the Court to determine what sum is really payable to the limited owner. The question of title in such proceeding is really incidental to the determining of the market-value on the interests of the claimant in the land acquired, (f).

The Land Acquisition Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is being acquired under the Act, but only for the acquisition of such interests in the land as do not already belong to the Government. When Government claiming to be the owner of the land seeks to acquire under the Act the interests of the other persons therein and such persons deny the title of the Government and set out that they themselves are the owners and claim compensation on that basis, the Collector should determine for the purpose of fixing the compensation to be

(d) *Imdad Ali Khan v. The Collector of Farakkabad*, 7 AH: 817.

(e) *The Government of Bombay v. Esufali Salebhoy*, 34 B. 618 : 12 Bom. L. R. 34 : 5 I. C. 621.

(f) *Mongaldas Gtrdhardas Parekh v. The Assistant Collector of Prantif Prant, Ahmedabad*, 45 B. 277 : 23 Bom. L. R. 148 : 64 I. C. 584 : *Government of Bombay v. N. H. Moss*, 47 Bom. 218 : 27 Bom. L. R. 1237 : (1926) A. I. R. (B) 47.

paid to them whether they are owners as they claim to be, or are entitled to the limited interest admitted by Government to belong to them. The word "claimant" as used in the L. A. Act means a claimant to compensation and Government is not a claimant, as it does not in proceedings under the Act, claim compensation, (g). When the Government or a Municipality or other local authorities for whose ultimate benefit the land is being acquired, claim to be full owner and no other person has any sort of right in the land, there is nothing to be acquired. But where the claim of the Municipality or other local authority is to a restricted right, there is nothing in the Act to prevent the Government from acquiring the land and then dealing with it in any manner it chooses. It is the Government that obtains the title by acquisition and neither a tenant under the Municipality nor the Court has any concern with the arrangements between the Government and the Municipality after the acquisition of the land. There is nothing to limit the scope of the Act, so as to exclude from its operation all cases in which a Municipality or other local authority, for whose ultimate benefit the Government may wish to take action, happens to have some interest in the land to be acquired, (h). Where Government is the owner of the land there can be under the L. A. Act proceedings for acquisition of only the buildings standing thereon and accordingly notification of intention to acquire only the buildings on the land is valid and constitutes a proper foundation of the proceedings, (i).

Cantonment Lands.—All lands in cantonments are not necessarily the property of Government. There may have been within the cantonment limits some lands which were never acquired by Government and of which the ownership has always been in private hands. In the cantonments, a peculiar tenure known as "military or cantonment tenure" has grown up, the characteristics of which are that private persons settling on land within the cantonment area have ownership in the buildings they erect, but property in the soil remains in the Government. Long possession of land in cantonment area with houses standing upon it, was not any proof of title, but was more consistent with a cantonment tenure. Therefore in cases of acquisition of lands with buildings in cantonment area what has to be acquired is the building and not the land unless the claimant can establish his title thereto, (j).

Certain buildings belonging to the appellants were taken compulsorily under Government notification. The Collector assessed the compensation in respect of the buildings only, on the basis of the cost of new buildings of the same character at Military Engineers Service rates. This was upheld by the District Judge. It was found that the land on which the building stood was not the property of the appellants and their only interest in the land that was given to them by the Cantonment Authority under the Canton-

(g) *Deputy Collector, Calicut v. Aiyavu Pillai*, 9 M. L. T. 272 : 9 Ind. Cas. 341.

(h) *Babujan v. Secretary of State and the Chairman, Gaya Municipality*, 4 C. L. J. 256.

(i) *Harichand v. Secretary of State*, 44 C. W. N. 5 (P. C.).

(j) *The Secretary of Cantonment Committee, Barrackpore v. Satish Chandra Sen*, 57 I.A. 339 : 58 Cal. 858 (P. C.) : 35 C. W. N. 173 : 53 C. L. J. 1733 : Bom. L. R. 175 : 60 M. L. J. 142 : 1931 A. L. J. 249 : 130 I. C. 616 : 1931 A. I. R. (P. C.) 1.

ment Regulations, was a license, to hold the land subject to one month's notice to quit with the right to receive as compensation, the value of the buildings. It was held dismissing the appeal, that as the appellants were licensees liable to be ejected at any time, the measure of their interest was the amount of compensation that they could claim if their license was determined, and that amount was fixed by the regulation at the value of their buildings, (k).

Religious properties—*Debuttur, Wakf, Mosques, Churches, Tombs etc.*—Under the L. A. Act ordinarily there is no exemption from acquisition. But under *Boards Instructions, II and 8 Bengal L. A. Manual, 1910, p. 53 & 52*, "it is incumbent on the officer whose duty it is to select land for public purposes to endeavour to avoid buildings etc., the acquisition of which will entail unnecessary expenditure on Government or annoyance to owners if the object sought can be equally well attained by slight alteration of the alignment of site chosen, or in some other manner. If the land applied for, contains religious buildings or tombs, the fact must be specifically noted in the application." "In preparing the draft declarations the Collector should see that there are no objections to the acquisition. Mosques, temples, churches, tombs or graveyards should not be included unless this is necessary and objections to be noted and reported." "It is competent for the State to acquire property belonging to religious endowment or property belonging to an institution held for public purposes for another public purpose. In case of such acquisitions, the authorities cannot proceed without specifying the particular parcel which is sought to be acquired." Acquisition of a part of wakf property, certain vacant plots belonging to it but not actually utilised by it, was upheld, (l).

But under various other Acts e. g., Defence of India Acts, Municipal Act, Requisitioning and Acquisition of Immovable Property Acts etc., these are generally exempted.

Valuation of separate interests in land.—What has to be acquired in every case under the L. A. Act is the aggregate of rights in the land and not merely some subsidiary rights such as that of a tenant. Jenkins, C. J. said that "for the purpose of ascertaining the market value of land the Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it," (l-1). Batchelor J. also observed in *Bombay Improvement Trust v. Jalbhoy*, (m), "reading the Act as a whole I can come to no other conclusion than that it contemplates the award of compensation in this way ; first you ascertain the market value of the land on the footing that all separate interests combine to sell ; and then you apportion or distribute that sum among the various persons found to be

(k) *S. C. Dhanjibhan v. Secretary of State* ; 164 I. C. 408 : 38 P. L. R. 1071 : 1936 A. I. R. (L) 1010 : *Sardar Sujan Singh v. Secy. of State*, 1936 A. I. R. (Pesh) 217.

(l) *Syad Abdul Gaffur v. State of West Bengal*, I. L. R. 1969, Cal. 408 ; *West River Co. v. Dix* (1948), 6 How. 507 ; *Suryapal Singh v. State*, 1953 S. C. A. 932 rel. on.

(l-1) *Babujan v. Secretary of State*, 4 C. L. J. 256, *Collector of Belgaum v. Bhimroo* (1908), 10 Bom. L. R. 657.

(m) *Bombay Improvement Trust v. Jalbhoy*, 33 S. 483 (404).

be interested ; sections 3, 11, 18 & 20 and especially sections 29 and 30 are decisive upon the point. Section 31(3) appears to tell the other way for though the sub-section is not perhaps worded with perfect accuracy, we have the antithesis marked between "land" and "an interest in land". That distinction is preserved throughout the Act where "land" is always used to denote the physical object, which is after all the thing that has to be acquired. Provision is made for compensation to all persons interested, but claim on this head are to be adjusted in the apportionment prescribed under Section 29 and 30 and do not fall to be considered till after the court has determined the market value of the land under section 23(1)". The value of the land can not and ought not to be determined independently of the huts, (n). Where there is one holding, there cannot be piecemeal acquisition, as the L. A. Act refers only to one notice, one proceeding and one award to be given and made regarding one holding and one ownership, (o). It is not separate interests but primarily the land which has to be valued (p). Although under the Amendment Act 13 of 1967 there must be one notification but there may be several declarations and several awards.

Effect of acquisition of land under the L. A. Act.—To acquire a land is not necessarily the same thing as to purchase the right of fee simple of it, but means the purchase of such interests as clog the right of Government to use it for any purpose they like (q). It follows, therefore, that lands when acquired, according to the provisions of the Land Acquisition Act, 1 of 1894, vest in the Government, and afterwards in the Company, for whom the same have been acquired free from all encumbrances. Under the old Act of 1870, it was held, that when the taking of a part of a person's land for public purposes cuts off all access to the rest of his land, he will be entitled to a right of way over the land taken which can only be effected by giving him compensation for the remaining portion of the land, (r). In (s), the line of the South Eastern Railway passed through the plaintiff's mouza, severed about 1200 bighas of land from the remaining portion of the mouza which lay on the south side of the line. The ryots of the land so severed, lived on the southern side of the railroad and before the making of the line they had access by a road from their dwelling houses to the land cultivated by them. A suit was brought to procure the removal of obstruction caused by the railway company and to establish the right of way of the plaintiff and his ryots to a road across the railway. It was held that the railway company, with the aid of Government acquired the land under the provisions of the Land Acquisition Act (VI of 1857, then in force) and by the 8th Section of that Act, the land taken became vested in the Government and afterwards in the railway company absolutely and free from every right or interests therein, of whatever description possessed by

(n) *Secretary of State v. Belchambers*, 3 C. L. J. 169.

(o) *R. C. Sen v. The Trustees for the Improvement of Calcutta* : 48 C. 893 ; 33 C. L. J. 509 ; 64 I. C. 577.

(p) *Secretary of State v. Bavalal*, 13 P. 221.

(q) *Government of Bombay v. Esufali Salebhoy*, 34 B. 618.

(r) *Vithal Sakharam v. Collector*, P. J. 1874, 118.

(s) *Collector, 24-Parganas v. Nabin Chander Ghose*, 3 W. R. 24.

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the former proprietors or by other persons. All rights existing before whether of passage or any other kind, absolutely ceased upon the acquisition of the land for the railway ; and no right of way afterwards arose or was continued merely, because there remained no mode of access to the land on the north, otherwise than by crossing the line. The express provisions of the law are not consistent with the existence of such a right, (t). Inchoate and accruing rights as well as easements already acquired, are extinguished by the acquisition of the land under the Act, (u).

Effect of Acquisition of land under special or local Act.—By virtue of various special or local Acts, e. g., West Bengal Estates Acquisition Act, Bihar Land Reforms Act, Bihar Abolition of Zamindaries Act ; Madhya Pradesh Abolition of Proprietary Rights Act etc. vast changes have taken place in the general interpretation and application of the word “land”.

Generally these local Acts have not defined ‘land’ but provided for acquisition of ‘Estate’ ‘tenures’ and all rights in sub-soil “along with all rights of intermediaries in said estate”, etc.

The West Bengal Estates Acquisition Act, 1954, provides for acquisition of Estates along with all rights of intermediaries in the Estates free from all encumbrances including (i) rights in sub-soil including mines and minerals, (ii) rights in hat, bazar, ferries, fisheries, tolls and the Sairati interest, (iii) lands in forest together with all rights to trees therein notwithstanding anything contrary contained in any judgement decree or order of any Court or tribunal. The third item is clause (aa) of s. 5 of said Act which was inserted by Amending Act XXV of 1957 with retrospective effect to counter-act the effect of decision given in *Ajit Kumar Bagchi v. State of W. B.* (v), where it was held that right to cut trees for purpose of wood in a forest and remove same cannot be said to be an ‘Estate’ within the meaning of the act and that did not create any interest in land and so is not affected. Consideration paid by a contractor for cutting trees was not a premium for right to enjoy the land but the price for wood (w).

A contract was entered into *inter-alia* to cut and carry away teak and timber, before passing of Madhya Pradesh Abolition of Proprietary Rights Act, 1955, it was held by Supreme Court that the section concerned is not retrospective and that the transaction is not affected although the Act was valid as has been held in (y).

The Judicial Committee of Privy Council in a case where a similar contract was given, held the contract not to be a grant of any interest in land, (z).

(t) *Fenwick, In re*, 14 W. R. Cr. 72 : *Taylor v. Collector*, (1887) I. L. R. 14 C. 423 : *Municipal Commissioners, City of Bombay v. M. Damodar Bros.*, 45 B. 725 : 23 Bom. L. R. 35 : 60 I. C. 571.

(u) *Barlow v. Ross* (1890) L. R. 24 Q. B. D. 381.

(v) *Ajit Kumar Bagchi v. The State of West Bengal*, 61 C. W. N. 576.

(w) *Firm Chhotabhai Lothabhai Patel & Co. and others. v. The State of Madhya Pradesh*, (1953) S. C. A. 1043 : A. I. R. (1953) S. C. 108.

(y) *Vishaswar Rao v. The State of Madhya Pradesh*, (1953) S. C. A. 901 : (1952), S. C. R. 1020.

(z) *Mohanlal Hargovind of Jubbalpur v. Commissioner of Income-Tax, C. P. Berar & Nagpur*, I. L. R. 1949 Nag. 892 P. C.

The effect of the amended clause (aa) in Sn. 5 of the West Bengal Estates Acquisition Act and which came into effect on 8th January, 1958, is that, the above rulings, so far as Bengal is concerned are no longer good laws and that all rights to trees etc., have passed to the State free from all encumbrances although the wood in a forest were sold to outsiders before the Act came into force (a). But the question of *ultra vires* of aforesaid section and sub-section on ground of violating fundamental rights or of taking away vested rights with retrospective effect and being too harsh and unreasonable and discriminatory, keeping in view the difficulties created by Art. 31A of the Constitution of India, was not raised and decided in those cases (b).

Fishery.—So far as a fishery is concerned, it is already stated that under the general law fishery rights only are not land within the meaning of the Act, (c). But the provisions viz., Sn. 5(a)-(iii) of Estate Acquisition Act, West Bengal or Sn. 4(a) of Bihar Abolition of Zamindari Act, 1949 and Madhya Pradesh Abolition of Proprietary Rights Act, 1951 or under the Orissa Estates Abolition Act, 1951 etc., the 'fishery' has been included in the 'Estates' that have passed to the respective States with the effect that the 'fishery' has become part of the 'land' so far as these Acts are concerned, (d), The Orissa Estates Abolition Act 1951 (1 of 1952) came into force on 9th February, 1952, the vesting date being 24th September, 1953. Before the vesting of the estate, in the aforesaid case, the petitioners entered into contract for catching fish from Chilka Lake, then estate of Raja of Parikud. The State, after 24th September, 1953, refused to recognise these licences. It was held that the right to catch fish is a *profit a prendre* in English law and it is a 'benefit arising out of land' in India under section 3(26) of General Clauses Act and so an immovable property. A sale of immovable property requires writing and registration, (e).

So things which were not and are still not "immovable properties" or "land" within the meaning of the Land Acquisition Act, become so under the special Acts. It is only the land including the rights arising out of it, but not the rights detached from the land, that can be acquired under the Act.

Clause (b) : Person interested.—Section 18 of the Lands Clauses Act, 1845, enacts that when the promoters of undertaking require to purchase or take any of the lands which by the Lands Clauses Act, 1845 or the Special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties entitled by that Act to sell and convey or release the same, or such of the parties as shall after diligent enquiry, be known to the promoters of the undertaking. The words "all parties interested" in the above section are very comprehensive, and include all persons having a freehold or leasehold

(a) *Bhutnath Gorai v. Divisional Forest Officer*, 62 C. W. N. 610, *Saktipada v. State of West Bengal*, A. I. R. 1959 Cal. 316.

(b) *R. M. D. C. v. Union of India*, (1957) S. C. A. 912.

(c) *Babujan v. Secretary of State*, 4 C. L. J. 256, *Raja Shyam Chunder v. Secretary of State*, 12 C. W. N. 569.

(d) *Ananda Behara & Anr. v. State of Orissa & Anr.*, A. I. R. (1956) S. C. 17.

(e) *Ganesh Chandra Khan v. State of West Bengal*, 62 C. W. N. 49.

interest in the lands, also one having an estate by way of mortgage, (f), the grantee of an annuity arising out of land (g), or one possessing an equitable estate (h). If, however, a tenant whose premises are taken, has no greater interest than a tenant from year to year, he is not entitled to a notice to treat under Sec. 18, (i).

It has been seen before that the Legislation intended to lump together in one single expression, viz. "land" several things or particulars, such as the soil, the buildings on it, any charges on it, and other interests in it which all have a separate existence and are capable of being dealt with in a mass or separately as the exigencies arising under the Act may require, (j). It should also be borne in mind that it is only land including the rights arising out of it, but not rights detached from the land that can be acquired under the Act. It follows therefore, that "person interested" means either the person in whom is vested the lump of several things or particulars, such as the soil, the buildings on it, the charges on it, and other interests in it which constitute the word "land" or the persons in whom is vested each of the several things or particulars, which have a separate existence and are capable of being dealt with separately. Under Section 11 of the L. A. Act, the Collector has to enquire into the value of the land and into the respective interest of the persons claiming the compensation and after awarding a sum for compensation, has to apportion the said compensation among all the persons known or believed to be interested in the land of whom or of whose claim he has information. Under Section 3, the expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. It is quite possible that a person may be interested in the compensation money without having an interest in the land in the legal sense of the term. The Act does not indicate how the Collector is to effect the apportionment and Sections 20 and 28 which deal with the proceedings of the Court when a reference has been made under section 18, are also silent on the point. The definition shows the "person interested" is not confined to persons whose title to share in the amount awarded has been admitted, (k). It includes a person whose claim as landlord is denied and whose claim conflicts with the claim of the person to whom the compensation has been awarded, (l). The definition in Sec. 3(b) is not exhaustive. It includes persons whose claim for compensation has been negatived by the Collector (m). Any person putting a claim to compensation, is a person interested.

(f) *Cook v. L. C. C.*, (1911) 1 Ch. 604.

(g) *Universal Life Insurance v. Metropolitan Railway*, (1866) W. N. 167.

(h) *Birmingham and District Land Co. v. L. N. W. Ry.*, 40 Ch. D. 167.

(i) *Syers v. Metropolitan Water Board*, (1877) 36 L. T. 277.

(j) *Government of Bombay v. Esufali Salebhai*, 34 B. 618 : 12 Bom. L. R. 34 : 5 I. C. 621.

(k) *Husaini Begum v. Husaini Begum*, 17 All. 573.

(l) *Rani Hemanta Kumari v. Harcharan Guha*, 5 C. L. J. 301, *Mongal Das v. Asst. Collector*, 45 B. 277.

(m) *State of Bihar v. Dr. G. H. Grant*, A. I. R. 1966 S. C. 237, *Sundarlal v. Paramsukhdas*, A. I. R. 1968, S. C. 366.

“Person”—The word “Person” shall include any company or association or body of individuals whether incorporated or not,—Sec. 3(39) of the General Clauses Act, (X or 1897).

Owner.—The word “Owner” is not defined in the Act, but an owner must be deemed to be one of the persons interested in the land to be acquired. Reading Sec. 10 of the Act, a proprietor, sub-proprietor, mortgagee, tenant or sub-tenant are all owners for the purpose of sec. 49, (n).

Government as “Person Interested”.—In an enquiry before the Collector in the case of acquisition of land with buildings thereon the Government put forward their claim to the land as owners and averred that as the claimant held it as a tenant by mere sufferance he was entitled to compensation in respect of the building only. It was held that in such a case the Collector has jurisdiction to go into and determine the question of title for the purpose of enquiry before him, that the L. A. Act applies to lands of which the Government are or claim to be owners, (o). But it has been pointed out that the expression “person interested” in section 18 does not include the Secretary of State for India-in-Council, (p). When Government has no proprietary interest in the land to be acquired but has only a right to levy assessment, the land can be notified for acquisition (q). The Government is a person interested within the meaning of Sec. 14 of the Land Acquisition Act in the amount of compensation paid to a gountia in Sambalpur in respect of bhogra land and is also entitled to a share of the compensation (r). The Act does not contemplate or provide for the acquisition of any interest which already belongs to the Government in land, which is being acquired under this Act, but only for the acquisition of such interest in the land which does not already belong to the Government. There can be no question of Government acquiring its own property. The Government is not a person interested within the definition and the Act does not contemplate its interest being valued or compensation being awarded therefor, (s).

Collector—not a person interested.—There is no suggestion anywhere in the Act that a “person interested” could include the Collector, (t).

Hindu widows and The Hindu Succession Act, 1956.—It is not correct that in apportionment the market value of each interest is to be ascertained. Prior to the passing of Hindu Succession Act, 1956 the various rights of the female members of a Hindu undivided family in the joint family property, had no market value though such members would be interested in the com-

(n) *Krishna Das Roy v. Collector of Pabna*, 16 C. L. J. 165 : 16 C. W. N. 327 : 13 I. C. 470.

(o) *Government of Bombay v. Esufali Salebhai*, 34 Bom. 618 : 12 Bom. L. R. 34 : 51 C. 621 : *Deputy Collector, Calicut v. Aiyavu Pillai*, 9 M. L. T. 272 : 9 Ind. Cas. 341 : *Bijoy Kumar Addy v. Secretary of State*, 25 C. L. J. 476 : 39 I. C. 889 ;

(p) *B. I. S. N. Co. v. Secretary of State for India*, 38 C. 230.

(q) *N. H. Moss v. The Govt. of Bombay*, 27 Bom. L. R. 1237 : (1926) A. I. R. (B) 47.

(r) *Secretary of State v. Bodhrum Dubey*, 11 P. L. T. 347 : 128 I. C. 344 : 1931 A. I. R. (Pat) 131.

(s) *The Collector of Bombay v. Naserwanji Mistri*, A. I. R. 1955 S. C. 298 : (1955), 1 S. C. R. 1311 : 1955 S. C. A. 692 : 1955 S. C. J. 339.

(t) *K. N. K. M. K. Chettyar Firm v. Secretary of State*, 11 Rangoon 344 : 1933 A. I. R. (Rang) 176.

pensation money. What the Collector and the Court have to do is to apportion the sum awarded amongst the persons interested as far as possible in proportion to the value of their interests, (u). Where land which is taken up by the Government under the L. A. Act belongs to two or more persons, the nature of whose interest therein differs, the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein so far as such value can be ascertained.

But Sections 14, 15 and 16 of the Hindu Succession Act, 1956, which came into force on 17th June, 1956, specifically provide that any property possessed by a female Hindu whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as limited owner. The property of a female Hindu dying intestate shall, devolve upon sons, daughters and husband, 2ndly upon heirs of husband, 3rdly upon mother and father and so on. Widow and mother of an intestate are class I heirs, sister is a class II heir etc. So the assessment of compensation shall have to be made on the basis of theirs being full owners or their respective shares and naturally therefore they must be persons interested.

Reversioners.—A reversioner who is entitled to succeed to land on the death of a widow holding a life interest is a "person interested", (v).

Shebait.—The expression 'person interested' in S. 3(b) of the L. A. Act is not confined to a person to whom the compensation money is to be immediately paid out, but includes other persons as well who though they may have no right to take the money then and there, have an interest therein in future. A presumptive shebait is therefore included in the expression (w).

Trustees and beneficiaries.—Where trust property is acquired, the trustees, the beneficiaries, their assignees or mortgagees are "persons interested" (x).

Position of Intermediaries :—Various legislations of land reforms are passed by both the Central as also the various State Legislatures providing for abolition of Zamindaries, Acquisition of Estates etc. So far as West Bengal is concerned The West Bengal Estates Acquisition Act, 1953 (Act 1 of 1954) provides that all estates and rights of intermediaries have vested in the State with effect from 15th April 1955 including those of raiyats and under raiyats. The Bengal Tenancy Act has been repealed by S. 59 of the W. B. Land Reforms (Amendment) Act, 1965 and by a Notification under S. 49 of Estates Acquisition Act, 1953. The Bengal Tenancy Act has no application now. So, the question whether any intermediary is a "person interested" shall depend upon the relationship that existed at the time of acquisition. Similar is the position in Bihar, Orissa, Madhya Pradesh, Uttar Pradesh etc. The Estate Acquisition Act and similar other local Acts clearly contemplate a merger of the original, superior and subordinate interests acquired by the State and vesting in it and an extinguishment or

(u) *In re the L. A. Act, in the matter of Pestonjee Jahangir*, 37 B. 76 : 14 Bom. L. R. 507 : 15 I. C. 771.

(v) *Gangi v. Shantu*, 116 I. C. 335 : (1929) A. I. R. (L) 736, *Chettiammal v. Collector of Coimbatore*, 105 I. C. 219 : 1927 A. I. R. (M) 867.

(w) *Nando Lal Mullick v. Kumar Arun Chandra Sinha*, 41 C. W. N. 464.

(x) *K. S. Banerjee v. Jatindra Nath Pal*, 108 I. C. 253 : A. I. R. 1928 (C) 475.

cessation of the same as tenure or interest in land and which has the effect of expiry of the terms of tenancy within the meaning of Bengal Tenancy Act so far as West Bengal is concerned, entitling the decree holder to proceed against other properties of the judgment debtor in execution of rent decree, (z).

It should be noted that generally but not always the special or Local Acts have exempted the Presidency Towns from their application e. g., 'Calcutta' is exempted from Estate Acquisition Act, 'Madras' is exempted from Madras Estate Abolition Act, 1948, etc.

Zamindari, Patnidar and Darpatnidar :—The Zamindar, Patnidar and Darpatnidar are all 'persons interested' (a). When land held in Patni is taken for public purposes the Patnidar is entitled to the compensation money for the loss he has suffered, (b). The compensation is to be apportioned between the parties according to the value of the interest which each of them parts with, (c).

Mourasi Mokurari Tenure-holder :—When land is taken for public purposes, the party prima facie entitled to compensation is the proprietor. Any party claiming the same as against the proprietor in virtue of a right created by the latter, e. g., as a mokuraridar is bound to prove the title he pleads, (d).

Inamdars :—Where the inam is granted in pre-British period to the ancestor of the holder as remuneration for services as a Kazi, even if the grant meant an assignment of revenue and not of land, it is capable of being regarded as an alienated land within the meaning of Sec. 2(2) of Berar Land Revenue Code, 1928, and the grantee is not a mere licensee but an owner of the land. He has interest in the land, which alone is relevant for the purpose of Sec. 21 of L. A. Act and he is entitled to receive the value of that interest, (e).

Ghatwali Tenure-holder :—In a suit by a ghatwal to recover compensation money for land appertaining to a ghatwal taluk which was taken for public purposes the defendants who claimed to participate in the compensation were the zamindars and the representatives of a sub-tenant in the ghatwali mohuls. It was held that as the zamindar had sustained no loss but continued to receive from Government under Reg. XXIX of 1814, Sec. 4, the same profits as they are hitherto been enjoying, they are not entitled to any compensation. That the sub-tenant had not any valid title to any portion of the land taken but was allowed to remain in possession by mere sufferance of the ghatwal and he was not entitled to any compensation. That the plaintiff being a ghatwal and not absolute owner was entitled only

(z) *Ahidhar Ghosh v. Nisu Bala Devi*, 62 C. W. N. 172 ; *Radha Mohan Bagchi v. Nalini Kanta Adhikari*, 62 C. W. N. 330 ; *Dhirendra Nath Dey v. Naresh Ch. Ray*, 62 C. W. N. 569 ; A. I. R. 1958 Cal. 453.

(a) *Nabodwip Chandra v. Brojendra Lal Ray*, 7 Cal. 406 ; *Gadadhar Das v. Dhanpat Singh*, 7 Cal. 585 ; *Ganpat Singh v. Motichand*, 18 C. W. N. 103.

(b) *Ray Kissri v. Nilkanta*, 20 W. R. 370.

(c) *Satish Chunder v. Rai Jatindra Nath*, 7 C. L. J. 284.

(d) *Issur Chunder v. Surttyo Dyal*, 12 W. R. 270.

(e) *Shafkat Hussain v. Collector of Amraoti*, 142 I. C. 364 : 1933 A. I. R. (Nag). 208.

to the interest of the compensation money which was kept in tact as a part of the ghatwali property (f).

Mirasidars :—Certain lands which had been waste from time immemorial were taken up by Government and compensation awarded. Claims were made by the mirasidar for the amount so awarded. It was held that the rights of the mirasidars over immemorial waste lands appear to be confined to grazing, cutting firewood and similar common privileges as stated in (g). But those rights were liable to be extinguished by Government alienating the land, (h).

Occupancy and non-occupancy raiyats in Bengal :—Occupancy and non-occupancy raiyats are persons interested (i). A tenant or sub-tenant even though his interest is not transferable except with the sanction of the superior landlord, has an interest which entitles him to be heard upon the question of adequacy of compensation (j). A raiyat or under raiyat in Bengal is a person interested, (k). A yearly tenant of a tank is a "person interested", (l).

A Ryot in Madras :—A ryot in occupation of ryoti lands on the date the Estates Land Act came into operation, can claim compensation in respect of the occupancy right conferred upon him by section 6(1) of the Act when the land is acquired by Government under the L. A. Act. A muchileka executed by a tenant prior to Madras Estates Land Act, relinquishing his claim for compensation does not estop him from making the claim in view of the right conferred by the Estates Land Act, (m).

Lessee :—A lessee for a fixed term is a person interested, (n). The word 'owner' in Sec. 23(3)(b) of the L. A. Act as amended by the Calcutta Improvement Act, includes the owner of a lease-hold interest, (o).

Lessee holding over is a "person interested" :—A plot of land was acquired under the L. A. Act within the town of Calcutta. The tenants who had erected masonry buildings on portions of the land and who were in possession at the time of acquisition, claimed before the Collector the value of their interests ; but the owner of the land claiming the whole of compensation money, the matter was referred to the Civil Court which held that the tenants were entitled to the value of the buildings. On appeal, the High Court held, that the lower Court came to a right finding on the fact and that the owner of the land was not entitled to the buildings erected by the tenants without being liable to pay them compensation even if the tenancy had come

(f) *Ram Chandra v. Rajeh Mahomed*, 23 W. R. 376.

(g) *Sakkaji Rau v. Latchmana Gaundar*, 2 Mad. 149.

(h) *Sivanath Naicken v. Nathu Rangachari*, 26 Mad. 371.

(i) *R. Mitter v. Anukul Chandra Mukherjee*, 2 C. L. J. 8n.

(j) *Jagdishwar v. Collector of Goalpara*, 39 C. L. J. 574 : (1925) A. I. R. (C) 197.

(k) *Jagat Chunder v. Collector of Chittagong*, 17 C. W.N. 1001.

(l) *Narain Chandra Boral v. Secretary of State*, 28 C. 152 : 5 C. W. N. 349.

(m) *Raja of Pittapuram v. Revenue Divisional Officer, Cocanada*, 42 M. 644 : 36 M. L. J. 455 : 51 I. C. 656.

(n) *Mekar Bassa v. The Collector of Lahore*, 184 P. L. R. 1901 ; *Swarnamunjuri Dassi v. Secretary of State*, 55 Cal. 994 : 32 C. W. N. 421 : 49 C. L. J. 54 : 112 I. C. 706 : 1928 A. I. R. (C) 522.

(o) *B. N. Elias v. Secretary of State*, 32 C. W. N. 860 : 108 I. C. 251 : (1929), A. I. R. (C) 20.

to an end, (p). Buildings erected on the land of another do not, by the mere accident of their attachment to the soil, become the property of the owner of the soil. If he who builds on another's land is not a mere trespasser, but is in possession under any *bona fide* title or claim or colour of title, he is entitled either to remove the materials or to obtain compensation for the value of the building, at the option of the owner of the land, (q).

Tenants-at-will and effect of special Acts :— It is found in evidence that the tenants-at-will having no transferable interest in the land, but their interest in the land was frequently sold and substantial prices were paid by the purchasers, the sub-tenant must be held to have had an interest in land, which had a market value as such, (r). A sub-tenant who was given a right to construct a pucca building on the land, whose interest is not transferable except with the sanction of his superior landlord, has an interest which entitles him to be heard upon the question of adequacy of compensation awarded by the Collector under the L. A. Act, (s). A tenant at-will is a 'person interested' to the extent of his limited interest provided it has got a market value (t).

The effect of the special or local Acts on the tenants is that, excepting in Presidency Towns which are generally but not always exempted from scope of such Acts, they become direct tenants because of merger of other intermediate interests. Where after the passing of an ejectment decree against a tenant, the estate of the intermediary decreeholder vested in the State, question arose whether an appeal under S. 47 C. P. C. was maintainable in view of vesting. It was held that such an appeal was maintainable in view of the fact that the decree already obtained does not become a nullity and so far as the land is concerned the appellants' claim for compensation will greatly vary in amount according as it is tenanted or khas, (u). The vesting of estates under the West Bengal Estates Acquisition Act would not in any way nullify the effect of an ejectment decree passed prior to the date of vesting ; and that erstwhile tenant would not be elevated to the position of a direct tenant as long as the decree remains effective ; and that an intermediary does not cease to be existent in law after vesting of the estates in the State and does not loose all interest in the vested land ; and that in exercise of its powers under O. 41 r. 33 of Civil Procedure Code, the Appellate Court may take notice of changes introduced by the Estates Acquisition Act, (v).

(p) *Jugut Mohinee Dassee v. Dwatka Nath Bysack*, 8 C. 852 ; *Dunia Lal Seal v. Gopi Nath Khetry*, 22 C. 820.

(q) *Vallaydas Narainji v. The Development Officer, Bandra*, 50 C. L. J. 45 (P. C.) ; 37 M. L. J. 139.

(r) *Girish Chandra Ray Chowdhury v. Secretary of State*, 24 C. W. N. 184 ; *Sadhu Charan Roy Chowdhury v. Secretary of State*, 36 C. L. J. 63 ; *Secretary of State v. Belchambers*, 33 C. 496 ; 10 C. W. N. 289 ; 3 C. L. J. 169.

(s) *Gadadhar v. Dhanput*, 7 C. 585 ; *Jagadishwar Sannyal v. Collector of Goalpara*, 39 C. L. J. 574 ; 84 I. C. 4.

(t) *Narain Chandra v. Secretary of State*, 28 Cal. 152 ; 5 C. W. N. 349.

(u) *Lalji Agarwalla Jain v. Jhingu Goala*, 61 C. W. N. 607.

(v) *M. L. Dalmiya & Co. v. Chinta Haran Mukherjee*, 62 C. W. N. 505.

Effect of various Tenancy Laws :—Ordinarily all tenants were not persons interested. Persons having an exclusive right to sell refreshment in a theatre (w), or tenants whose tenancies have been determined by notice or efflux of time (x), were held to be persons not interested. But various Tenancy Laws, e. g. West Bengal Premises Tenancy Act, 1956, provides that a tenant includes any person by whom or on whose account or behalf the rent of any premises, is, or but for a special contract, would be payable and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction, so under such Acts a tenant, till a decree or order is passed finally, continues to be a statutory tenant and is a person interested.

The right to possess a premises is a valuable right and makes a statutory tenant a 'person interested', (y). Statutory tenant is an 'occupier' and is entitled to notice under S. 9(3).

Contractual Tenant :—A raiyat or an under rayat or occupancy or non-occupancy rayats are 'persons interested'. A sub-tenant though his interest is not capable of valid transfer, has an interest which entitles him to be heard on the question of adequacy of compensation, (z). A tenant who has a permanent and transferable interest in a tenure is entitled to a compensation, (a).

Persons acquiring interest by user and occupation :—Two villages were granted to certain persons under a perpetual lease. Certain Bhati lands (waste lands producing grass) in the said villages were acquired under the L. A. Act 1 of 1894. The lessee claimed the whole of the compensation but the villagers claimed that they had acquired a substantial interest in the Bhati lands by long and continuous user thereof adversely to the lessee. The evidence showed that the Bhati lands had been enclosed, that they had been sold by registered sale deeds, that they had been passed from hand to hand under these sale deeds, and that the lessees were perfectly aware that the villagers were thus dealing with them. It was held that the villagers had acquired by this action an interest in the Bhati lands and were therefore entitled to compensation (b). On the acquisition of a piece of land under the L. A. Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession without payment of rent for more than twelve years. He asserted that he held the land under another person and not under the rival claimant who was the reversionary heir of the last male owner. It was held that the person in such possession was entitled to the full compensation paid for compulsory

(w) *Frank War & Co., v. London County Council*, (1904), 1 K. B. 713 A. C.

(x) *Shaikh Hasrat v. Jagat Narain*, 11 C. W. N. 312 (N).

(y) *Brown v. Ministry of Housing*, (1953) 2 All. E. R. 1358.

(z) *Jagadishwar v. Collector of Goalpara*, 39 C. L. J. 574 : 1952 Cal. 197.

(a) *A. M. Dunne v. Nobukrishna*, 17 Cal. 144.

(b) *Vasudev Bhaskar v. Collector of Thana*, (1897) P. L. J. 274 ;

Vallavdas Narayanji v. Special L.A. Officer for Railway, 46 B. 272 : 23 Bom. L.R. 1288 : 85 I. C. 427 : (1922) A. I. R. (B) 365.

acquisition, having acquired the right to hold the land rent free by twelve years' adverse possession, (c).

Mortgagee :—The Mortgagee is a person interested (d). So also an equitable mortgagee is a person interested (e).

Purchaser at a revenue sale :—A purchaser at a revenue sale was entitled to be made a party to the proceedings (f).

Intending Purchaser :—A person who has entered into a valid agreement for the purchase of land is a person interested within the meaning of Sec. 3(b) of the L. A. Act. In *J. C. Galstaun v. Secretary of State of India-in-Council*, (g), it was held that an intending purchaser who enters into a contract to purchase the land acquired after the award, is a person interested. The High Court observed : "that no question of apportionment having arisen, the question whether the intending purchaser had an interest such as would entitle him to any portion of the compensation money, was a matter foreign to the proceeding at the stage. The fact that the intending purchaser had claimed an interest in the compensation money and the Collector thought that he was a person who could come in as claiming an interest was sufficient to entitle him to ask for a reference and to appear in support of it" (h).

A person claiming a right under an agreement to sell, is a 'person interested' irrespective of whether there was any substance in the claim and the collector is bound to treat every person who claims the compensation as a 'person interested' whether the claim is valid or not (i).

Attaching Creditor :—An attaching creditor is a person interested (j).

Person interested in easement affecting the land :—A person shall be deemed to be interested in land if he is interested in an easement affecting the land. The definition in Act X of 1870 of a 'person interested' was ; "The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act." The clause "and a person shall be deemed to be interested if he is interested in an easement affecting the land" has been added to the definition of "person interested" in Act X of 1870 in order to prevent any doubt as to the right to compensation of persons who own easement affecting lands taken up under Act 1 of 1894, thus, making definition expressly cover such person, *Vide* also notes under Section 3 Cl. (a) and under Section 16. It seems pretty clear that persons entitled to easements over the land so acquired

(c) *Biswanath v. Brojo Mohan*, 10 W. R. 61 ; *Rajbans Sahay v. Roy Mohabir Prosad*, 20 C. W. N. 828 : 1 P. L. J. 258 : 37 I. C. 464.

(d) *Prokash Chandra Ghosh v. Hassan Banu Bibee*, 42 Cal. 1146 ; *Basamal v. Tazammal Hossain*, 16 All. 78 ; *Jotoni Choudhurani v. Amar Krishna*, 13 C. W. N. 350 ; 6 C. L. J. 745 ; *Gajendra Sahu v. Secretary of State*, 8 C. L. J. 39.

(e) *Martin v. London Chatham & Dover Railway Co.* (1866) 1 Ch. App. 501.

(f) *Promotho Nath Mitter v. Rakhal Das Addy*, 11 C. L. J. 420.

(g) *J. C. Galstaun v. Secretary of State for India-in-Council*, 10 C. W. N. 195.

(h) *Nabin Chandra Saha Pramanik v. Kristo Barani Dass*, 15 C. W. N. 420.

(i) *M. Kuppuswami v. The Special Tehsildar*, 1967 (1) M. L. J. 329.

(j) *Shiva Pratapa v. A. E. L. Mission*, (1926), A. I. R. (M) 307 : 97 I. C. 496 ; *Sundarlal v. Paramsukhdas*, A. I. R. 1968, S. C. 366.

are entitled to compensation under the Act, Mitchel, p. 119, (k). Under the L. A. Act 1 of 1894, a person shall be deemed to be interested in land if he is interested in an easement affecting the land and 'lands' include benefits to arise out of land. Obstruction of right of way, of light and of support will entitle the owner of the dominant tenement to compensation for any loss he may thereby suffer as person interested. When an existing easement is interfered with in execution of works authorised under compulsory powers, the owner should in all cases claim compensation for injury done to the dominant tenement (l).

Who are not "persons interested" :—Lord Hobhouse in delivering the judgment of the Privy Council in *Secretary of State v. Shammugaraya Moodaliar (m)* held that "no compensation is tendered by the Collector or ordered by the Act except to persons interested in the land. If the acquisition injuriously affects the earnings of the person interested, he is to obtain further compensation beyond the market value of the land. But no compensation is given to person not interested in the land on the ground that their earnings may be affected by the change of ownership or indeed on any ground. The quarrymen are no more interested in the land than a ploughman or a digger is interested in the land on which he works for wages. Nor are their earnings the earning of the zamindar, who is interested. The market-value of a property is not increased by the circumstance that a number of persons works on it and so earn their livelihood. That is no profit to the owner ; it may be expense to him. Persons having an exclusive right to sell refreshments in theatre (n), or tenants whose tenancies have been determined by notice or efflux of time (o), even though they have a reasonable expectation of continuing in possession or of obtaining a renewal of their lease (p), cannot claim a share in the compensation and are not persons interested."

Property under Court of Wards :—Mother of a person whose property was under the Court of Wards challenging amount of compensation for property of her son acquired by Government, on the plea that with the increase of compensation her allowance would also increase, is not a 'person interested' within meaning of S. 18(1), property being under Court of Wards, besides, suits affecting that property without leave of Court of Wards, is barred under S. 20 of the Court of Wards Act, (q).

Clause (c) : Collector :—All compulsory acquisition in India are carried out by the authority of the Government either by the Collector of the District

(k) *Re. Tilbury Ry. Co.* (1889) L. R. 24 Q. B. D. 40 ; *Ward v. Folkestone Waterworks Co.* (1890) 24 Q. B. D. 334.

(l) *Swainston v. Firm and Metropolitan Board of Works*, (1883) 52 L. J. Ch. 235 : 31 W. R. 498 ; *Ford v. Metropolitan and Metropolitan District Railway Co.* (1886) 17 Q. B. D. 12 C. A. ; *Taylor v. Collector of Purnea*, 14 C. 423 ; *Raja Nilmony Singh Deo v. Rambandhu Rai*, 7 Cal. 388 (P. C.) : *Mittra v. Municipal Committee*, 6 L. 329 : 89 I. C. 658 : 1925, A. I. R. (L) 523.

(m) *Secretary of State v. Shanmugaraya Mudaliar*, 20 I. A. 80 : 16 Mad. 369 (P. C.).

(n) *Frank War & Co. v. London County Council*, (1904), 1 K. B. 713 A. C.

(o) *Sheikh Hasrat v. Jagat Narain*, 11 C. W. N. 312 (N).

(p) *Dyers v. Metropolitan Board of Works*, (1877) 36 L. T. 277.

(q) *Durga Devi v. Collector of Jammu*, A. I. R. 1967 J. & K. 6.

or by an officer especially empowered by the Government in that behalf. He is known as the Land Acquisition Collector. The Land Acquisition Collector is, therefore, a Government Officer. Even when lands are acquired for railways, local bodies, such as Calcutta Improvement Trust, Municipalities and District Boards or public companies, the land is acquired by the Government and after acquisition, is handed over to the local body or company concerned. The Collectors, are therefore, entirely independent of the local body which acquires the land.

Collector—his functions :—Although the appointment of a Collector under the L. A. Act rests solely with the Local Government yet when they have once appointed that officer, he must be allowed to prosecute his enquiries under the Act up to their end, without interference from the Government in their executive capacity (r). The Collector has, under Section 11, to enquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation he has to apportion the said compensation among all the persons known or believed to be interested in the land of whom or of whose claim he has information (s). His enquiry and his valuation are departmental in their character and made for the purpose of enabling the Government to make a tender through him to the persons interested. Therefore the fact that in such a proceeding the Collector did not sufficiently consider the evidence produced by the owner of the land and that he formed his opinion on materials which were not before him as evidence would not render the proceedings improper. If the owner doubted the correctness of his valuation his remedy lay in demanding a reference to the Civil Court under Section 18 of the Act, (t). His ultimate duty is not to conclude by his so called award, but to fix the sum which in his best judgment, is the value and should be offered. It is not implied that the Collector would be precluded by anything in the statute from inviting at the enquiry the criticism of the owner or any information he had in his hands if he thought that in the circumstances this would advance his knowledge but this is for his discretion, (i).

The Collector is not in a position to pass any final order in the matter of the value of the land or the right to claim the price fixed. A party dissatisfied can claim a reference to the Civil Court, whose duty it is to settle the matter in dispute judicially, (u).

Collector—his status :—A Collector holding an enquiry under the Act is not a Judicial Officer, nor is the proceeding before him, a judicial proceeding. He acts as the agent of the Government for the purpose of acquisition clothed with certain powers to require attendance of persons to make statements relevant to the matters which he has to enquire into, (v). So it has been held in *B. I. S. N. Co. v. Secretary of State for India*

(r) *Dessabhai v. The Special Officer, Salsette*, 36 B. 599.

(s) *In re. Pestonjee Jehangir*, 37 B. 76 : 14 Bom. L. R. 507 : 15 I. C. 771.

(t) *Ezra v. Secretary of State*, 30 C. 36 : 7 C. W. N. 249 : 32 Cal. 605 (P. C.).

(u) *Durga Rakshit v. Queen Empress*, 27 C. 820.

(v) *Ezra v. Secretary of State*, 30 C. 46 : 7 C. W. N. 299 : 32 C. 605 (P. C.) ; *Bhajan Lal v. Secretary of State*, 1932 A. L. J. 769 (S. B.) : 1932 A. I. R. (All) 568.

in Council, (w), the High Court has no jurisdiction to review an order made by the Collector under sec. 11 of the L. A. Act as the Collector acting under that section is not a Court but only an agent of the Government, (x). In *Ezra v. Secretary of State*, (y), their Lordships of the Judicial Committee observed : "it will be found that the proceedings resulting in the 'award' are administrative and not judicial ; that the award in which the enquiry results is merely a decision (binding only on the Collector) as to the sum that shall be tendered to the owner of the lands ; and that if a judicial ascertainment of value is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the Court.. It is to say the least, perfectly intelligible that the expert official charged with the duty of fixing a value should be possessed of all the information in the hands of the department and it should, at the same time, avail himself of all that is offered at the enquiry." The Collector acting under the L. A. Act, as has been seen, being not a judicial officer, he cannot be properly regarded as a Revenue Court within the terms of sec. 476 of the Code of Criminal Procedure. His proceedings under the L. A. Act are not regulated by the Code of Civil Procedure nor is he right in requiring a petition put in before him to be verified in accordance with that Code so as to make any false statement punishable as perjury. The Collector has also no authority to administer oath, (x). On the authority of the above cases it has been held in *Corporation of Calcutta v. Shaikh Keamuddin* (y), that in performing the functions under ss. 127 to 140 of the Calcutta Municipal Act, the Executive Officer is acting in an administrative and not in a judicial capacity. That is why a claimant is entitled to appear before Collector personally or by his agent and an application under S. 18 is not required to be signed personally by the claimant, (z).

Collector—not a local authority :—"Local Authority" has been defined in S. 3 Cl. (31) of the General Clauses Act which runs as follows :—"Local authority" means a municipal committee, district board, body of Port Commissioners, or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund."

So the Collector who acts as an agent of the Government, is not a 'local authority' (a). (For further notes see notes under S. 6 *supra*).

Collector—his liability to be sued.—It cannot be suggested that the Collector should never be held liable to pay out money again when he has once paid it out to a wrong person. There may be cases in which he has shown *such negligence* that he could rightly be held liable for the loss by a

(w) *B. I. S. N. Co. v. Secretary of State for India-in-Council*, 38 C. 230.

(x) *Durga Das Rakhit v. Queen Empress*, 27 C. 820 : *Ezra v. Secy. of State*, 30 e. 36 ; *Balkrishna Daji Gupte v. The Collector, of Bombay* B, 699 ; *Kashi Parshad v. Notified Asea, Mahoba*, 54 All. 282 : 1932 A. I. R. (All) 598.

(y) *Corporation of Calcutta v. Shaikh Keamuddin*, 55 Cal. 228.

(z) *Hrishikesh Mitter v. The State of West Bengal*, 69 C. W. N. 287 ; *The Commissioner of Agricultural I. T. v. Keshu b Chandra Mondal*; (1950) S. C. J. 364 ; *Umed Singh v. Subhag Mal*, 431. A. 1 : 20 C. W. N. 137.

(a) *Abdul Azeez v. Mysore R. A. Tribunal* A.I.R. 1962 Mys. 31 (D. B.)

claimant of money which the Courts subsequently hold, should have been paid to him. But to decide whether a Collector should be so liable would involve a Court in an enquiry into the procedure adopted by him and a finding that at least there had been some negligence or serious error on his part. There is nothing in the L. A. Act to suggest that such an enquiry should be held on a reference under the provisions of section 18 of the Act. A question of that sort is one which can only be decided satisfactorily in a separate suit, (b).

Collector—his jurisdiction :—The Collector under the L. A. Act, I of 1894, has limited jurisdiction. He is bound by the official declaration in the Local Official Gazette. The Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If he does so, he commits an act of trespass. He has to find out the precise quantity of land notified for acquisition within specified boundaries given in the declaration, value the same under the provisions of the Act, and give possession accordingly. If the Local Government committed a mistake, by giving an erroneous boundary, the Collector cannot cure the mistake. If the land acquired be for Government purposes and if the Government takes possession of land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country ; and so is a company if the acquisition is for its purposes. But such excess land cannot be valued and compensation awarded for it under the provisions of the Act, (c).

Collector—his jurisdiction to decide question of limitation :—The decision on a question of limitation under s. 18 rests with the Collector and not with the District Judge. S. 19 also indicates that the question of limitation is to be decided by the Collector. The District Judge can not sit as a Court of Appeal over the Collector when the latter has come to the conclusion that the application is made within time. The function of the District Judge is confined to giving a decision on objection raised, (d).

Collector cannot delegate his duties :—Section 3 (c) of Act I of 1894 provides that the expression Collector means the Collector of a District and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under the Act. It does not include any officer to whom the Deputy Commissioner thinks fit to delegate his duties, (e).

Officer specially appointed :—For officers specially appointed under cl. (c) in—(1) Ajmer-Merwara, *See* Gazette of India 1902, Pt. II, p. 1081 ; (2) Assam, *See* Assam Local Rules and Orders ; (3) Bombay, *See* Bombay Local Rules and Orders ; (4) Burma, *See* Burma Rules Manual.

Where by a Government notification a person was appointed officiating

(b) *K. N. K. R. M. K. Chettyar Firm v. Secretary of State*, 11 Rang. 344 ; 1933 A. I. R. (Rang) 176.

(c) *Harish Chunder Neogi v. Secretary of State*, 11 C. W. N. 875.

(d) *Attar Singh v. Secretary of State*, 1940 A. I. R. Pesh. 35. *Secretary of State v. Bhagwan Parshad*, 1932, A. L. J. 752 ; 141 I. C. 621 ; 1932 A. I. R. (All) 597.

(e) *Mahomed Siddique v. Secretary of State*, 8 O. C. 118.

Land Acquisition Officer but the notification did not state that he was to perform the functions of Collector, he had no jurisdiction to take proceedings under sections 9 and 10 of this Act or to give an award, (f). But if this omission was rectified by a notification which was made retrospective, it cannot be contended that the award was delivered by an officer without jurisdiction, (g).

Clause (d) : "Court" :—The Select Committee on the Bill to amend the L. A. Act, 1870 made a report in the following terms dated the 2nd February 1893 : "In section 3 of the Bill we have added a clause amending the definition of 'COURT'. It appears to us that all references from the Collector's authority, should be to an independent judicial authority, and, now that the Punjab and Oudh have divided their judicial establishments from their revenue establishments, there are few parts of India in which there are not judicial officers who have no concern with executive administration. We think, therefore, that the time has now come when the Court to which references under the Act will be made should be generally the principal civil court of original jurisdiction. To meet, however, the case of provinces which have still no Courts of separate civil jurisdiction or the case in which pressure of business may require assistance to the ordinary civil court, we have retained the clause in the original definition which empowers Local Government to appoint special judicial officers to perform the functions of a judge under the Act."

The Court exercising jurisdiction under the L. A. Act I of 1894 is ordinarily the District Court which is the principal civil court of original jurisdiction outside presidency towns of Calcutta, Madras, Bombay (and Rangoon), but shall not include a High Court in the exercise of Original Civil Jurisdiction. *vide section 3 (15) of the General Clauses Act, X of 1897.*

Appointment of a special judicial officer :—The Local Government has authority under the Act to appoint a judge, other than a District Judge, to hear land acquisition cases. He is called a Special Land Acquisition Judge, and the Court he presides over is called the Special L. A. Court. The appointment by the local government of a special judicial officer to try land acquisition cases must be made by publishing the same in the local official gazette. In the absence of specially authorized judicial officer to try land acquisition cases it is the District Judge who exercises jurisdiction to try land acquisition cases because the Court of the District Judge is the principal civil court of original jurisdiction. The question arose as to whether an appeal would lie to the High Court from a decree of the L. A. Court when that court was constituted by the appointment of a special judicial officer, *e. g.*, the Chief Judge of the Small Causes Court. The High Court observed : "We can find no other (*i. e.*, other than sec. 54 of the L. A. Act) authority conferring upon the High Court the power to act as a Court of Appeal from the specially constituted Court from whose decision the appeal is brought. It is urged that this results in an anomaly because an appeal

(f) *S. Arjan Singh v. State of Punjab*, I. L. R. (1958) Punj. 538.

(g) *Bhagwat Dayal v Union of India*, I. L. R. (1958) Punj. 1104 : A. I. R. 1959 Punj. 479.

would have lain had the court been a 'principal civil court of original jurisdiction'. As to whether an appeal would lie in such a case we express no opinion. But in the present case it is clear that the Court in question was not a 'principal Civil Court of original jurisdiction'. It was a Special Court specially constituted. It has its own statutory status and does not follow the status of a Court ordinarily presided over by the person who happens to be appointed as its judge. No authority has been conferred upon High Court to hear appeals from such Special Courts except in the case of an award and if this results in an anomaly the remedy is in the alteration of the law and not in the construction of the existing Act which would do violence to the most elementary rules of construction", (h).

A Court constituted under the L. A. Act is subordinate to the High Court and hence revision to the High Court is competent from the order of such court. When a District Judge declines to exercise jurisdiction on a reference made by the Collector under sec. 18, revision to the High Court is competent, (i). The decision of a Subordinate Judge as a Judicial Officer appointed by the Provincial Government under s. 3(d) of the L. A. Act, is a decree and is appealable under the C. P. C. in the ordinary way, (j).

For instances of appointments of special judicial officers, see Madras Local Rules and Orders ; Bombay Local Rules and Orders ; Coorg Local Rules and Orders ; U. P. Local Rules and Orders. For notification appointing the District Judge of Mirzapur for the family Domains of the Maharaja of Benaras in the Mirzapur and Benares district, see U. P. Gazette, 1907, Pt. I, p. 725.

Additional District Judge :—Under the provisions of the Bengal, N. W. P. and Assam Civil Courts Act of 1887 an Additional District Judge, has jurisdiction, to hear references, (k). An Additional District Judge as such is competent to hear and dispose of references under the L. A. Act which are made over to him for disposal by the District Judge under the provisions of sec. 8, cl. (2) of the Bengal, N. W. P. and Assam Civil Courts Act of 1887 through he may not be specially empowered by the local Government in that behalf, (l).

The Land Acquisition Court and its limited jurisdiction :—The Court of the Land Acquisition Judge is a Court of special jurisdiction, the powers and duties of which are defined by statute and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the legislature to be comprehended within the scope of the enquiry before it. It was never contemplated by the statute to authorise the Land Acquisition Judge to review the award of the Collector, to cancel it

(h) *Bhagavoti Doss Bavaji v. S. Sarangaraja Iyengar*, 55 Mad. 722 : 61 M. L. J. 312 : 135 I. C. 460.

(i) *Makhan Lal v. Secretary of State*, 56 All. 656 ; 1934 A. L. J. 32 ; 1935 A. I. R. (All) 260 (F. B.).

(j) *Chikkana Chettiar v. Parumal Chettiar*, I, L. R. 1940 M. 791 ; 1940 M. W. N. 438 ; 51 L. W. 553 ; (1940) 1 M. L. J. 732 ; 188 I. C. 447 ; 1940 A. I. R. (M) 474.

(k) *Jogabandhu v. Nandalal*, 50 I. C. 798.

(l) *Jogesh Chandra Sanyal v. Rasik Lal Saha*, 50 I. C. 690 ; *Lila Mahtan v. Sheo Gobind*, A. I. R. 1956 P. 108.

or to remit it to him to be recast, modified or reduced. The Court of the Land Acquisition Judge is restricted to an examination of the question which has been referred by the Collector for decision under sec. 18 and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained or cannot obtain any order for reference, (m). The jurisdiction of the courts constituted under the L. A. Act is special one and is strictly limited by the terms of sections 18, 20 and 21. It only arises when a specific objection has been taken to the Collector's award, and it is confined to the consideration of that objection. Once, therefore, it is ascertained that the only objection taken is to the amount of compensation, that alone is the 'matter' referred, and the Court has no power to determine or consider anything beyond it, *e. g.*, question of measurement raised for the first time after the references were duly made by the Collector, (n).

Exclusive jurisdiction of the L. A. Court :—When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special court for the investigation of matters which may possibly be in controversy, such jurisdiction is *exclusive* and cannot concurrently be exercised by the ordinary courts. But when a party has not been able to put forward his claim by reason of defects and irregularities in the proceedings as where the claim has been put forward but not adjudged, the jurisdiction of the civil court cannot be treated as superseded. A suit will lie in the civil court in respect of claims for damages which could not have been foreseen at the time of the acquisition proceedings, (o). It has all along been held that a decree which apportions a compensation made under the L. A. Act by a Court to which such matter has been referred, is *final* and cannot be questioned otherwise than by the appeal permitted under sec. 54 of Act I 1894 (formerly under sec. 39 of Act X of 1870), (p). All questions of title arising between the rival claimants in a land acquisition proceeding should be decided by the L. A. Judge in the land acquisition case and should not be left to be decided by a separate suit. The court was bound to decide all points, the decision of which was necessary to enable it to pass orders as to the disposal of the money including questions arising as to who was the proper heir of the claimant who had died after the deposit of money in Court, (q).

Decision of Land Acquisition Court : Res Judicata—Upon construction of the Act, a decision of the court, if not appealable, and if there is an appeal, then decision of the appellate court is final and not liable to be contested by a suit, (p). It has been laid down that it is the judge in apportioning the

(m) *Shyam Chandra Mardraj v. Secretary of State*, 35 C. 525 ; 7 C. L. J. 445 ; 12 C. W. N. 569 ; *Gajendra Sahu v. Secretary of State*, 8 C. L. J. 39 ; *B. I. S. N. Co. v. Secy. of State*, 38, C. 330 ; 15 C. W. N. 87 ; 12 C. L. J. 505.

(n) *Pramatha Nath Mullick v. Secretary of State*, 57 I. A. 100 ; 57 Cal. 1148 ; 34 C. W. N. 289 ; 42 Bom. L. R. 522 ; 51 C. L. J. 154 ; 121 I. C. 536 ; 1930 A. I. R. (P. C.) 64.

(o) *Maharaja Sir Rameswar Singh v. Secretary of State*, 34 C. 470 ; 11 C. W. N. 356 ; 5 C. L. J. 660.

(p) *Nilmonee Singh Deo v. Rambandhu Rai*, 4 C. 757.

(q) *Babujan v. Secretary of State*, 4 C. L. J. 256 ; *Krishna Kalyani v. R. Braunfield*, 20 C. W. N. 1028 ; 36 I. C. 184.

compensation money which he is directed to apportion, to decide the question of the title between all persons claiming a share of the compensation money. Pontifex J. in deciding the question observed : "I should be extremely reluctant to hold that any decision under the L. A. Act, should be treated as *res judicata* with respect to the title to other parts of the property belonging to persons who may come before the judge, under sec. 39 (now section 19) because although a decision with respect to the particular money then before the court is a decision which is final with respect thereto unless appealed from, and any party summoned before the judge but has not appeared, is bound by such decision, I don't think that a decision of the judge with respect to the compensation money should be treated as *res judicata* affecting other parts of the claimant's property," (r).

An adjudication as to the right of persons, claiming compensation under the L. A. Act I of 1894, concludes the question between the same parties in subsequent proceedings, (s). The Judicial Committee of the Privy Council has gone further in discussing the question in *Ramchandra Rao v. Ramchandra Rao*, (t), held that it was not open to the (civil) courts to review the decision of the High Court in the proceeding under sec. 32 of Act I of 1894. It is not competent to the court in the case of the same question arising between the parties to review a previous decision no longer open to appeal given by another court having jurisdiction to try the second case. This principle is of general application and is not limited by section 11 of C. P. C., so that the fact that the decision in question was not obtained in a former suit did not make any difference.

A person who having been made a party to a reference under the L. A. Act, had the opportunity and duty of litigating his claim before the Special L. A. Judge but did not then press his claim to any part of the compensation, is not entitled to come again to the civil court and re-open the question, (u).

When suit lies in the Civil Court :—The general presumption is against construing a statute as ousting or restricting the jurisdiction of the superior courts. The intention must be expressed in clear terms, not merely implied but necessarily implied. "The general rights of Queen's subjects are not hastily to be assumed to be interfered with and taken away by Acts of Parliament. Such statutes are to be strictly construed when their language is doubtful." (v). A construction which would impliedly create a new jurisdiction is to be avoided, especially when it would have the effect of depriving the subject of his freehold or of any common law right. . . . or

(r) *Nobodeep Chunder v. Brojendra*, 7 C. 406.

(s) *Mohadevi v. Neelamoni*, 20 M. 269; *Chowakaran v. Vayyaprath*, 29 M. 173.

(t) *Ramchandra Rao v. Ramchandra Rao*, 49 I. A. 129; 45 Mad. 320, (P. C.); 26 C. W. N. 713; 35 C. L. J. 545; 20 A. L. J. 684; 24 Bom. L. R. 963; 43 M. L. J. 78; 67 I. C. 408; 1922 A. I. R. (P. C.) 80.

(u) *Bhandi Singh v. Ramadhin Rai*, 10 C. W. N. 991; 2 C. L. J. 359; *Satish Chandra Sinha v. Ananda Gopal Das*, 20 C. W. N. 816; 33 I. C. 253; *Mt. Bhagwati v. Mt. Ramkali*, 66 I. A. 145; 1 L. R. (1939) All. 460; 43 C. W. N. 677; 1936 O. L. R. 293; 70 C. L. J. 23; 41 Bom. L. R. 1028; 181, J. C. 211; 1939 A. I. R. (P. C.) 133.

(v) *Jacobs v. Brett*, L. R. 20, Eq. 1.

of creating an arbitrary procedure. *Maxwell*, p. 184 (third edition). No doubt, when a power has been conferred in unambiguous language by statute, the courts cannot interfere with its exercise and substitute their own discretion for that of persons or bodies selected by the legislature for that purpose, (w). Nor does any presumption arise against the finality of a decision by an authority with statutory powers to pronounce in respect of a duty or liability created by the statute. For then "there is no ouster of the jurisdiction of the ordinary courts ; for they never had any." *Maxwell*, p. 156 (2nd Ed.), (x).

No civil court has any jurisdiction to go into any question decided by the L. A. Court. In a claim disposed of by the special procedure prescribed by Act I of 1894, the order or adjudication of the owners or claimants to the property for which compensation was assessed and awarded cannot be questioned otherwise than by provisions of the Act, and the Civil Courts are not competent to re-open and determine matters disposed of in accordance with the Act in a separate suit, (y).

A person claiming a portion of the compensation awarded by the Collector in a land acquisition proceeding is entitled to maintain a civil suit to establish his claims where the question of apportionment of the compensation money had not been determined by the Collector, (z).

Clause (e) : Company :—Section 6 of the L. A. Act provides that subject to the provisions of Part VII of the Act, whenever it appears to the local Government that any particular land is needed for a public purpose or for a company, a declaration shall be made to that effect. Therefore it is clear that the provisions of the L. A. Act may be put in force for the acquisition of land (1) for a public purpose, (2) for a company. Then the question arises ; is it for each and every company that lands can be acquired by Government under the provisions of the L. A. Act ? It has therefore, become necessary to define the expression "company" so as to indicate clearly, at the very outset, what the term "company" means and for what companies lands can be acquired by the Government under the L. A. Act. The expression "company" whenever it occurs in the L. A. Act, means a company that is registered either under the Indian Companies Act, VI of 1882, as amended or under the (English) Companies Act, 1862 to 1890 or incorporated by an Act of Parliament of the United Kingdom or by an Indian law etc. The words "by an Indian law" have been substituted in the section, for "of the Governor-General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937. The last clause has been added by the Land Acquisition (Amendment Act) XVII of 1919 to include also societies which are registered under the Society Registration Act XXI of 1860 or a registered society within the meaning of the Co-operative Societies Act II of 1912. Hence it follows that it is only for registered companies

(w) *Attorney General v. Great Western Railway Coy.* (1877), 4 Ch. D. 735 ; *Queen v. Collins*, (1876) 2 Q. B. D. 30 ; *London County Council v. Attorney General* (1902), A. C. 165.

(x) *Balavant Ramchandra v. Secretary of State*, 29 B. 480 ;

(y) *Amolok Shah v. Charan Das*, 16 P. W. R. 1913 : 17 I. C. 684.

(z) *Chandu Lal v. Ladli Begum*, 18 P. W. R. 19 ; 49 I. C. 657.

or societies registered under the Indian Companies Act in India or under the English Companies Act in Great Britain that lands can be compulsorily acquired under the provisions of the L. A. Act, Part VII, and not for company or companies which are not so registered.

A company registered under the Bombay Co-operative Societies Act, 1925, though not under the Co-operative Societies Act, 1912, is a "Company" within the meaning of the Sec. 3(e) of the L. A. Act, (a). The provisions for the acquisition of land for companies are contained in sections 38-44 of the Act, *infra*.

Municipal Corporation not a Company :—As a Municipal Corporation established under the Bombay Provincial Municipal Corporations Act (50 of 1949) and the Municipal Borough to which it succeeded in 1962, established under the Bombay Municipal Boroughs Act, 1925, were clearly controlled in many matters by the State Government, it is plain that the Municipal Corporation is a 'local authority' as defined in S. 3(h) of the local Act and not a company within S. 3(e) (VIII) of or the purposes of the L. A. Act, (b).

The Companies Act 1956 :—The Companies Act 1956 (Act I of 1956) marks an important stage in the development of company law in India. It is both a consolidating and an amending measure and repeals the familiar Indian Companies Act 1913, as amended from time to time. The Indian law relating to joint stock companies follows a pattern similar to law of England and other democratic countries. The most important changes are the creation of "Government Companies" in which not less than 51% of the Share Capital is held by Central Government or by any State Government or Governments or partly by Central Government and partly by one or more State Governments ; and creation of various categories e. g. Private, Public, Holding and Subsidiary, companies and companies regulated by Special Act e. g. Banking Companies Act 1949 etc. Provisions of Companies Act are modified for application to "Government Companies".

The provisions of the present Act did not apply to societies which have got to be registered under the Societies Registration Act 1860 or in case of Co-operative Societies which have got to be registered under the Co-operative Societies Act 1912. In order to attract the application of Land Acquisition Act to them, definition of the term "Company" was amended by Land Acquisition (Amendment) Act XVII of 1919 which however is very wide and covers companies registered under Act VII of 1913 and Act I of 1956 and societies registered under the Societies Registration Act, 1860 and those under the Co-operative Societies Act, 1912. The definition of the term "Company" has been further amended by Parliament Act 31 of 1962 to include societies registered under any other law relating to Co-operative Societies for the time being in force in any State.

A 'private company' is excluded from the definition of the word company by virtue of inclusion of S. 44(B) in the L. A. Act as amended by Act 31

(a) *Shantiniketan Co-operative Housing Society Ltd. v. Madhav Lal Amitchand*, 60 B. 125.

(b) *Gurushidhawa Virasangyya v. The State of Mysore*, A. I. R. 1968 Mys. 127 (D. B.).

of 1962, with the effect that lands for 'private companies' cannot be acquired excepting for the purpose of erecting dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith. In a private company the right to transfer share is restricted and it has no right to invite public for their shares and the number of members is limited to 50 only. State Transport Corporation is a Company, (c). A Sangha registered under the Societies Registration Act is a 'Company' within the meaning of L. A. Act, (d).

Clause (ee) ; Appropriate Government :—This clause has been inserted by the Adaptation of Laws Order, 1950 and has been necessitated by the aforesaid amendment made throughout the Act, excepting in Section 43, substituting "appropriate Government" in place of "Provincial Government". If land is acquired for the purpose of Union of India, it is the Central Government that has to be satisfied before issuing declaration. Declaration issued after satisfaction of State Government only in that case is bad in law, (e).

Clause (f).—PUBLIC PURPOSE

History of Public Purpose :—The history of public purpose relating to acquisition of land is the history of Land Acquisition Act itself. The sovereign power of every State has the authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction. This power is termed in the United States as "eminent domain". But it is not deemed politic to exercise that authority so as to interfere with the security in the enjoyment of private property for public purposes without paying the owner its fair value. It rests upon the famous maxim *Salus populi est suprema lex* which means that the welfare of the people is the paramount law and on the maxim *necessitas publica major est quam privata*, which means "public necessity is greater than private." The history of the Act is described elsewhere. So, it is clear that the fundamental principle for acquisition of land is that there must be some public purpose for such acquisition whether it is on behalf of a section of public or for a society or for public utility company or for any other companies or industrial concerns and secondly fair value must be paid to the owner.

There can be no acquisition without public purpose :—The preamble of the Act I of 1894 explains the reason which led to its enactment—"for the acquisition of land needed for public purposes or for companies and for determining the amount of compensation to be made on such acquisition".

It seems from the above preamble that the Act makes a distinction between acquisition of land needed for public purposes and that for a Company, as if land needed for a company need not have public purpose. The distinction lies in the procedure but not in the general principle as explained later. At the outset the intention of the legislature was clearly

(c) *Valjibhai Muljibhai Soneji v. State of Bombay*, A. I. R. 1963 S. C. 1890.

(d) *R. K. Agarwalla v. State of West Bengal*, A. I. R. 1965 S. C. 995.

(e) *Angrup Thakur v. State of Punjab*, A. I. R. 1968, Delhi 97.

expressed by Hon'ble Mr. Bliss in introducing the Bill long ago and which runs thus :—

“it is not intended that the Act should be used for acquisition of land for any company in which the public have a mere indirect interest, and of the works carried out by which the public can make no direct use. The Act, can not therefore, be put in motion for the benefit of such a company as a spinning or weaving company or an iron foundry, for although the works of such companies are distinctly “likely to prove useful to the public ; it is not possible to predicate of them the terms on which the public shall be entitled to use them”, a condition precedent to the acquisition of land. It is important both that the public should understand that the Act will not be used in furtherance of private speculations and that the local Government should not be subject to pressure which might sometimes be difficult to resist on behalf of enterprises in which the public have no interests.”

The objective of the preamble is followed in Sections 4, 5A, 6, 38A, 40, 44B etc. Sec. 4 provides for issue of a notification when the Government thinks “that a land is needed or is likely to be needed for any public purpose” etc., but it does not contain the words ‘the Company’ while Sec. 5A specifically refers to ‘acquisition of lands for companies’. Sec. 4 is the starting point of acquisition and which compels the existence of a public purpose as a pre-requisite for acquisition. Sec. 6 provides for declaration when the Government is satisfied that land is needed for a public purpose or for a company (no mention of company having a public purpose).

Under Part VII, Sec. 38A specially provides acquisition for erecting dwelling houses for workmen or for amenities connected therewith in an industrial concern not being a company. Similar also is the provision of Sec. 40(1)(a) in case of company.

Sec. 44B prohibits acquisition for ‘private companies’ excepting for purposes of housing the workmen etc. Now it may be seen that Secs. 6, 38A or 40(1)(a) or 44B do not mention expressly any public purpose in case of company. Ordinarily erecting dwelling houses for workmen or for providing amenities connected therewith, is not a public purpose, so far as a company is concerned. Because most of the companies are solely for gain, some for gain along with public utility such as Calcutta Electric Supply Corpn., Tramway Coy., etc. They produce goods for sale to public for profit and they require lands for their own workers.

So after the provision in cl. (2) of Art. 31 of the Constitution providing that there can not be any acquisition excepting for public purpose, those abovementioned provisions would be *ultra vires*. But the words “erecting dwelling houses for workmen and providing amenities connected therewith” have been declared to be for the benefit of homeless workers in the Objects and Reasons and for protection of small industries, and so a deserving public cause. The Courts also came to the rescue and held those provisions to be public purposes and that there

can be no acquisition even for a company without there being public purpose, (f).

It is an 'Existing Law' :—This Act is an 'Existing Law' within meaning of Art. 31(5) of the Constitution and is protected from attack, but the L. A. Act itself stipulates existence of public purpose as stated above.

Further almost all the previous legislations re : Land Acquisition, provide for existence of public purpose as is shown elsewhere.

Therefore it is clear that there can be no acquisition without there being a public purpose even for a company. As is already stated in notes under the preamble that it is entirely wrong to suggest on the basis of observation in (f) and (g) that there can be acquisition for a company without there being any public purpose. The Santiniketan case is no authority for this proposition. It may be noted that Sn. 40 clause (b) provides that the company is engaged in any industry or work which is for a public purpose and clause (c) provides that such acquisition is needed for the construction of a work which is likely to prove useful to the public etc., are both same things as public purposes.

Public Purpose—What it means :—There is no definition of 'public purpose' given in the Act, nor any limitation regarding what is likely to prove useful to the public ; both matters are left to the absolute discretion of the local Government. It is not competent for any Court to assume to itself the jurisdiction to impose restriction on this discretion by holding that at an enquiry under Sn. 40, the person whose land was intended to be acquired should have an opportunity to appear and object and it was held that such a course is contrary to the policy of the Act and that the Government is the sole judge as to whether there was any public purpose, (h).

When in an interpretation clause it is stated that a certain term 'includes' so and so, the meaning is that the term retains its ordinary meaning and the clause enlarges the meaning of the term and makes it include matters which the ordinary meaning would not include, (i).

So it follows that what the legislature intended by using the word 'includes' is that, besides the ordinary meaning of the expression 'public purpose' whatever that may be, other purposes for the benefit of the public may be included. Provision for village site is included in the term 'public purpose'.

It is not possible to define what a public purpose is, it has not a rigid meaning. It is elastic. Its concept varies with the time, the state of the society and its needs, (j). The inclusive definition of public purpose in Sec. 3(f) not being compendious, is not useful in ascertaining the ambit of that expression. Broadly speaking the expression public purpose would

(f) *Babu Barkya Thakur v. State of Bombay*, A. I. R. 1960 S. C. 1203 ; *Gurudas Saha v. L. A. Collector*, A. I. R. 1957, Cal. 495 ; *R. L. Aurora v. State of U. P.*, 1962 (I) S. C. A. 182 ; *State of Bombay v. Bhanji Munji*, 1955 (I) S. C. R. 777 ; *State of Gujarat v. Santilal*, A. I. R. 1969 S. C. 634.

(g) *Santiniketan Co-operative v. Madhavlal*, 60 B. 125, 37 Bom. L. R. 955.

(h) *Ezra v. Secretary of State*, 30 Cal. 36 : 7 C. W. N. 249.

(i) *Official Assignee of Bombay v. Firm of Chandulal Chimmanlal*, 76 I. C. 657.

(j) *State of Bihar v. Kameswar Singh*, A. I. R. 1952 S. C. 252 : 1952 S. C. R. 889.

include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Public purpose is bound to vary with times and the prevailing conditions in a given locality and therefore it would not be a practical proposition even to attempt a comprehensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose, (k). The provision of house-site for poor people is a public purpose for it benefits a large class of people and not one or two individuals. When the primary object is personal gain whether that be of a private individual or of a company the public benefit resulting from the action of the person or the company is too remote and the purpose cannot be said to be a public purpose, (l).

The phrase "public purpose" includes a purpose, that is an object or aim in which the general interest of the community, as opposed to the particular interest of the individuals, is directly and vitally concerned. In 1854 the E. I. Company granted the land in suit to the predecessor in title of the defendant for a term of 99 years. A proviso was inserted in the lease reserving to Government the right to resume possession of the land for the purpose of providing suitable house accommodation for Government officials. It was held that the provision of providing suitable house accommodation for Government officials was a "public purpose". "Public purpose" includes any object which secures the good of the public by securing the efficiency of those servants of the Crown on whose service public good materially depends, (m). In (n) it has been held that the phrase 'public purpose' whatever it may mean, must include a purpose, that is an object or aim, in which the general interest of the community as opposed to the particular interest of individuals, is concerned.

Generally speaking the purpose is to promote the public health and general welfare, particularly when ours is a welfare state, (o). Law Commission also kept the definition to be of inclusive type.

Seven kinds of acquisitions :—Although broadly two types of acquisitions under this Act are known viz. (i) For Public Purpose, and (ii) for Companies, but on analysis we find that they can be placed under seven categories viz.—

(1) For Public Purpose (S. 6).

(2) For Industrial Concerns not being a Company (S. 38A).

(k) *Somawanti v. State of Punjab*, A. I. R. 1963 S. C. 151 : (1963) 2 S. C. R. 774 : (1963) 1 S. C. A. 548 : (1963) 2 S. C. J. 35.

(l) *Veeraraghavachariar v. Secretary of State*, 49 Mad. 237 : 48 M. L. J. 204 : 86 I. C. 485.

(m) *The University of Bombay v. The Municipal Commissioner of the City of Bombay*, 16 Bom. 217 ; *Hemabai v. Secretary of State*, 13 Bom. L. R. 1097 : 12 I. C. 871 ; *Moosa Hajee Hasan v. Secretary of State*, 42 I. A. 44 : 39 Bom. 279 ; 17 Bom. L. R. 100 ; 21 C. L. J. 134 : 13 A. L. J. 117 : 19 C. W. N. 305 (P. C.) ; *Maheswar Bharati v. State of Assam*, A. I. R. 1956, Assam 190 ; *Satyavati v. State of Madras*, A. I. R. 1952 Mad. 252.

(n) *State of Bombay v. R. S. Nanji*, A. I. R. 1956 S. C. 294.

(o) *S. Arjan Singh v. State of Punjab*, A. I. R. 1959 Punj. 538.

- (3) For Companies, for erection of dwelling houses for workmen etc. [S. 40(i)(a)].
- (4) For Companies engaged in work for public purpose [S. 40(i)(aa)].
- (5) For Companies for some work likely to prove useful to public [S. 40(v)(b)].
- (6) For public purpose primarily but on behalf of a Company (S. 6 & 40).
- (7) For Railway or other companies with which the appropriate Government is bound by agreement to provide land.
(See notes under the preamble).

Now, item No. 3 having been declared a public purpose, all items are covered by public utility or public purpose only in different forms.

Item No. 1.—Public purpose in general :—These acquisitions are generally made on behalf of local authorities or local statutory or other public bodies having public service as their objectives. It includes the following :—

- (i) Sanitary improvements of any kind including reclamation.
- (ii) The laying of village site, townships, the extension, planned development or improvement of existing village sites etc.
- (iii) The settlement of land for agriculture with weaker section of the people or in general for agricultural development.
- (iv) The development of natural resources of the State.
- (v) For promotion of public health.
- (vi) For promotion of education.
- (vii) For greater comforts or convenience to be given to public or a section of it.
- (viii) For promotion of economic conditions of people.
- (ix) For promotion of house building schemes.
- (x) For promotion of religious or moral institutions.

Within the above categories the following have been held to be public purposes :—

- (1) Housing accommodation for homeless, (p).
- (2) For the rehabilitation of refugees, (q).
- (3) For carrying out scheme of land reforms, (r).
- (4) For benefit of displaced persons, (s).
- (5) Requisition for military purposes, (t).
- (6) A law made for securing an objective declared in the Directive Principles of the Constitution as matter of State Policy, (u).
- (7) For suitable accommodation for pilgrims near a temple, (v).

(p) *State of Bombay v. Bhanji Munji*, A. I. R. 1955 S. C. 41 ; *State of Bombay v. R. S. Nanji*, A. I. R. 1956, S. C. 294.

(q) *H. P. Khandelwal v. State of U. P.*, A. I. R. 1955 All. 12; *State of Bihar v. Kameswar Singh*, A. I. R. 1952 S. C. 222 ; *Tilak Ram v. State of Punjab*, A. I. R. 1956, Punj. 33.

(r) *Shazad Khan v. Jhalia Singh*, A. I. R. 1955 M. B. 146.

(s) *Sampuran Singh v. Competent Officer*, A. I. R. 1955, Pepsu 148.

(t) *Dimeswar Dutta v. Dy. Commissioner, Sibsagar*, A. I. R. 1954, Ass. 159.

(u) *Surya Pal Singh v. Govt. of U. P.*, A. I. R. 1951 All. 674.

(v) *Amulya Charan Banerjee v. Corporation of Calcutta*, I. L. R. 49 Cal. 838.

- (8) For quarters for municipal servants, (w).
- (9) For construction of roads, (x).
- (10) House sites for poor people, (y).
- (11) For suitable accommodation of Government Servants, (z).
- (12) For playground for a school, (a).
- (13) For house sites for Panchamma labourers, (b).
- (14) For roads in municipal areas, (c).
- (15) For maternity homes or child welfare centres, (d).
- (16) For building public library, (e).
- (17) For protection of ancient monuments under Sn. 10 of Ancient Monuments Preservation Act VII of 1904, (f).
- (18) For provision of village sites as provided in the section, (g).
- (19) Construction of lakes for irrigation purposes, (h).
- (20) For opening a market on behalf of Panchayat, (i).
- (21) For opening a students' home, (j).
- (22) Establishment of Medicine factory, (k).
- (23) Establishment of a Slaughter house for maintaining supplies of food in locality, (l).
- (24) For the staff of foreign consulate, (m).
- (25) For pathway to a well open to public, (n).
- (26) For irrigation and agricultural land, (o).
- (27) For implementation of town planning scheme and Town Planning Acts, (p).
- (28) For extension of abadi of the village under the Madhya Pradesh Land Revenue Code of 1955, S. 226, (q).

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- (w) *Municipal Corporation of Bombay v. Ranchordas*, A. I. R. 1952 Bom. 558.
 (x) *Parina v. Secretary of State*, A. I. R. 1926 Mad. 1099.
 (y) *Veeraraghachariar v. Secretary of State*, A. I. R. 1925 Mad. 837.
 (z) *University of Bombay v. Municipal Commr. of the City of Bombay*, I. L. R. 16 Bom. 217.
 (a) *Maheswar Bharati v. State of Assam*, A. I. R. 1956 Ass. 190 ; *Krishnalal Sadhu v. State of W. B.*, A. I. R. 1966 Cal. 275.
 (b) *Ramaswami Iyer v. Secretary of State*, A. I. R. 1931, Mad. 361.
 (c) *Radha Binode v. Surendra Nath*, 105 I. C. 377.
 (d) *Nodurchand v. State of West Bengal*, A. I. R. 1952 Cal. 67.
 (e) *Brij Nath Sarin v. U. P. Government*, A. I. R. 1953 All. 182.
 (f) *Vishnu Narayan Vaidya v. The District Dy. Collector, Kolaba*, 42 B. 100 : 43 I. C. 480.
 (g) *Veera raghavachariar v. Secy. of State*, 49, Mad. 257.
 (h) *Gopi v. H. P. Government*, A. I. R. 1966 H. P. 8.
 (i) *Gopala Krishna v. Secy. Board of Revenue*, A. I. R. 1954 Mad. 362, see also 48 Cal. 316.
 (j) *Gurudas Saha v. First L. A. Collector*, A. I. R. 1957 Cal. 495. *State of West Bengal v. P. N. Talukdar*, A. I. R. 1965 S. C. 646.
 (k) *Gadadhar Ghosh v. State of West Bengal*, 67 C. W. N. 460.
 (l) *Iflikher Ahmed v. State of M. P.*, A. I. R. 1961 M. P. 140.
 (m) *State of Bombay v. Ali Gulshan*, A. I. R. 1955 Bom. 810.
 (n) *Madras Land Acquisition Manual*, 1926, P. 85.
 (o) *Rustomji Ardeshir Wadia v. Asst. Development Officer, Bandra*, A. I. R. 1940 Bom. 260.
 (p) *State of Bombay v. Devalbhai Naranbhai*, I. L. R. 1960, Bom. 331.
 (q) *Ramarao Rodba Wanjari v. State of Maharashtra*, 1961 N. L. J. (Notes) S. 6.

- (29) For opening of railways under Sn. 7 of Indian Railways Act 1890, (r).
- (30) For housing accommodation of Harijan Community, (s).
- (31) The construction of Kuhl Khal for irrigational facilities, (t).
- (32) For Social Workers' quarters, Students' home, Guest house and Panthasala for a Sangha, (u).
- (33) For re-settlement and rehabilitation of displaced persons, (v).
- (34) For establishment of a market yard for convenience of public, (w).
- (35) Rehabilitation of displaced persons is a public purpose but not the provision that if the Central Government does not think it expedient, or practicable for its own convenience or for convenience of a lessee or licensee who is not a displaced person, the rightful owner shall not be restored to that property. S. 20B of Displaced Persons (Compensation and Rehabilitation) Act, 1954 is *ultra vires* Art. 31(2) of the Constitution, (x).

(36) Acquisition associated with Mahatma Gandhi's work and life, (y).

Compensation and Public Purpose :—Under Art. 31(2) of the Constitution, the acquisition which includes also requisition must be for a public purpose and secondly the law must provide for compensation or lay down principle for compensation.

The law must describe the point of time at which the value is to be ascertained and that the said compensation must be equivalent to the value of the property acquired, as otherwise the law or particular section of any act concerned shall be *ultra vires* Art. 31(2) of the Constitution, (z).

But the requisitions above mentioned relates to requisitions under laws other than Defence of India Acts or Rules enacted after proclamation of emergency. But the adequacy of compensation could have been challenged prior to 4th Amendment of the Constitution, 1955, after which the words "and no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate." were added to Art. 31(2) of the Constitution and so it was held in (a) that the principles laid down in *Bela Banerji's case* (b) and *Subodh Gopal Bose's case* (c), will apply to all cases instituted prior to the said 4th Amendment Act, (1955) but not to cases subsequent to that or in other words fair market value must be paid and it was justiciable in cases prior to said amendment. *Shantilal's*

(r) *G. I. P. Railway v. Corpn. of Bombay*, 16 Bom. L. R. 104.

(s) *Satyavati v. State of Madras*, A. I. R. 1952 Mad. 252.

(t) *Gopi v. H. P. Government*, A. I. R. 1966 H. P. 8.

(u) *R. K. Agarwalla v. The State of West Bengal*, A. I. R. 1965 S. C. 995.

(v) *Ganga Prasad Verma v. State of M. P.*, A. I. R. 1968 M. P. 22.

(w) *Gurusidiwa v. State of Mysore*, A. I. R. 1968, Mys. 127.

(x) *Lachmandas v. Mun. Committee, Jalalabad*, A. I. R. 1969 S. C. 1126.

(y) *Kanaiyalal v. State of Gujarat*, A. I. R. 1970, N. S. C. 1.

(z) *Lachmandas v. Mun. Committee, Jalalabad* (*supra*).

(a) *State of Gujarat v. Santilal*, A. I. R. 1969 S. C. 634.

(b) *State of West Bengal v. Bela Banerji*, 1954 S. C. A. 41 (46).

(c) *State of West Bengal v. Subodh Gopal Bose*, A. I. R. 1954 S. C. 92 : 1954 S. C. R.

case goes so far as to say that even the principles for determining compensation also can not be challenged since 1955, (d).

However, the compensation must be paid from the date of notification under Sn. 4 of the L. A. Act. Even if a property was at first requisitioned under the Defence of India Act or other similar Acts, the property was acquired by the Government permanently under those Acts or any other Act, compensation must also be paid from the date of acquisition i. e., notification and fair value must be paid and in cases prior to 1955 it could be challenged. Subsequent to 1955 Amendment although the adequacy of compensation can not be challenged directly, still the principles laid down for fixing compensation can still be challenged if the compensation is illusory or if the principles prescribed are irrelevant to the value of property at or about the time of acquisition, it can be said that the Legislature committed a fraud of its power and therefore the law is bad. This finding of the Supreme Court in *Vajravelu's* case (e), although held to be *obiter* and not binding in *Shantilal's* case (d), still so long as the judgement which is based on this finding, is not overruled, it may hold good.

Requisitions :—Although it is not correct to say that 'acquisition' includes 'requisitions', still for the purpose of Court Fees the term 'acquisition' includes temporary acquisitions i.e., 'requisition' even if it is under the Defence of India Act and Rules, and so s. 8 of Court Fees Act read with Sch. I, Art. I is applicable under Calcutta High Court, (f). But under Delhi and Punjab High Courts, Sch. II, Art. II of Court Fees Act i. e., fixed court fee is payable, (g).

Requisitions under Defence of India Act etc., stand in different footing because D.I. Acts etc., are laws made after proclamation of emergency under Government of India Act 1935 in case of Acts prior to the Constitution and in subsequent Acts by proclamation under Articles 352 to 359 of the Constitution whereby the fundamental rights described in Part III of the Constitution including Art. 31-A remain suspended. The effect is that there need not be any public purpose excepting the purposes enumerated therein, although *prima facie* they are public purposes. Section 19 read with rule 75-A of D. I. Act, 1939 and sections 29 to 39 read with rules 108 to 114 of D. I. Act. & Rules 1962 deal with acquisitions and requisitions. These laws generally provide that a notice of requisition or acquisition must be served on the owner and that the property vests in case of acquisition from that date free of all encumbrances and that compensations are to be calculated in both cases from the date of service of notices respectively and that there is also provisions for paying compensation on the basis of current prices. All other laws dealing with requisitions do

(d) *State of Gujarat v. Shantilal*, A. I. R. 1969 S. C. 634.

(e) *P. Vajravelu Mudaliar v. Special Dy. Collector, Madras*, 1964 (2) S. C. J. 703.

(f) *Sohanlal Bahety v. Province of Bengal*, 50 C. W. N. 821 ; *Satyra Charan Sur v. State of West Bengal*, A. I. R. 1959 Cal. 609 ; *Srurengiri Lakshminarayana Rao v. Rev. Div. Officer, Kakinada*, A. I. R. 1968 Andh. Pra. 348.

(g) *Hirji Virji Jangbari v. Govt. of Bombay*, A. I. R. 1945 ; *Kunwar Jagat Bahadur Singh v. State of Punjab*, A. I. R. 1957 Punj. 32 ; *Mangal Sen v. Union of India*, A. I. R. 1970 Delhi 44 (D. B.).

not keep the fundamental rights suspended and general law will prevail subject to provisions in those laws. If there is an acquisition after requisition, compensation is mostly paid on the basis of market value prevailing on the date of acquisition, but there is an exception e. g., under Defence of India (4th Amendment) Ordinance, XLV of 1945, compensation for acquisition is calculated from date of requisitioning. It is of doubtful validity. (See notes under Part II, Central Acts, *supra*).

Compensation to be paid wholly or partly out of public revenues.—Second Proviso to Section 6 of the Act which requires that where an acquisition of land made by Government otherwise than on behalf of a company, the compensation to be awarded must be paid either wholly or partly out of public revenues, must, receive a reasonable construction and must be treated as implying payment of some part that is substantial and material. A payment by Government of one anna out of a compensation amount of Rs. 3,000 and odd is not a real and *bona fide* compliance with the terms of the section but is a mere evasion of the law, (h). When money is paid into a Government treasury by the hand of one private individual and after passing in tact through the treasury, is paid out into the hands of another private individual, it cannot, with any accuracy be described as becoming part of the public revenues within the meaning of section 6 of the L. A. Act, (i).

The above view in *Ponnaia v. Secretary of State*, (i) was dissented from in *Senja Naicken v. Secretary of State*, (j). There the plaintiffs were the owners of the suit property which was acquired for the purpose of forming a road by a Government Notification. The cost of the road was defrayed by private contributions, and the Government added the sum of one anna from public revenue.

The private contributions were accepted as such by the Government and kept as a separate deposit for the purpose of constructing the road.

They could not therefore be said to be public funds as they were never merged in the general funds of the public. There was no evidence that the acquisition had been brought about by any indirect motive or that the Land Acquisition Act had been set in motion in order to annoy the owners. It was held that the contribution of one anna by the Government towards the compensation to be awarded for the property was sufficient to satisfy the proviso to sec. 6 (1) of the L. A. Act, and that the declaration made under sec. 6 (1) of the Act was valid. If the Legislature intended that a substantial portion of the compensation should be paid out of public revenue, then it would have used appropriate language to convey that idea, (k). Whether a small contribution by the Government meets the requirements of law

(h) *Chatterton v. Cave*, (1878), 3 App. Cas. 483.

(i) *Ponnaia v. Secretary of State*, 51 M. L. J. 338 : 97 I. C. 471 : (1926) A. I. R. (M) 1099.

(j) *Senja Naicken v. Secretary of State*, 50 M. 308 : 51 M.L.J. 849 : 25 L.W. 34.

(k) *Sree Raja Kendragula v. State of Andhra* ; A.I.R. 1960 Andh., Pra. 343 ; *Anant Ram Balmanind v. State of Punjab*. A.I.R. 1962 Punj. 235.

would depend upon the facts in each particular case, (I). When the acquisition is for public purpose the whole or part of the compensation is to come out of public revenue etc., and where the acquisition is for a company the whole of the compensation has to be paid by the company. The court is not precluded from enquiring whether the notification that the land was needed for a public purpose was made in fraud of the Act, namely, against the proviso to sec. 6 (1), which required that such notification could not be made unless part or whole of the compensation came out of the public revenue or some fund managed or controlled by a local authority, (I).

If the acquisition is for a company the provisions of Part VII of the Act must be complied with, (m).

Bombay State Transport Corporation is not a public authority and provisions of Part VII of the Act having not been complied with and no part of the compensation money was to come out of public revenue, the acquisition was held to be void, (n).

Where 20 per cent of the cost of acquisition of certain lands for building sites is to be levied in the first instance from the private parties and 80 per cent should be first paid by the Government to be subsequently recouped from private parties to whom the lands are to be assigned, the provisions of s. 6 (1) are substantially complied with in that, part of the acquisition costs had to come out of the public revenues at the time of acquisition, (o). In *Secy. of State v. Gopala Aiyar*, (p), the Government issued a notification under sec. 4, of its intention to acquire land for the purpose of providing house-sites for panchamas and other people advancing 80 per cent of the price to them to be recovered in instalments in a period of 20 years. A suit was filed against the Government to restrain it from acquiring the land on the ground that the intended acquisition was illegal.

It was held that the arrangement as regards the recovery of the price did not contravene the condition required by the proviso to sec. 6 (1) of the Act that no declaration could be made unless the compensation to be awarded was to be paid wholly or partly out of the public revenues. It is not necessary that the intention of the Government to contribute a portion of the cost of acquisition should appear on the face of the notification. But it is absolutely essential that the declaration of intention of the Government to contribute should precede the notification under sec. 6, (q).

The validity of the acquisition proceedings under the L. A. Act depends

(I) *Somawanti v. State of Punjab*, A.I.R. 1963 S.C. 151 : (1963), 2 S.C.R. 744 : (1963), 2 S.C.J. 35 ; *Shyam Behary v. State of Madhya Pradesh*, A.I.R. 1965 S.C. 427 ; *Chandra Kanta Sharma v. The Dy. Commissioner & Collector, Nowgong*, A.I.R. 1971, Ass. & Nagaland, 1, (F. B.).

(m) *State of W. B. v. P. N. Talukdar*, A.I.R. 1965 S.C. 646 ; *Shyam Behary v. State of Madhya Pradesh*, 1965 (I) S.C.A. 588 : A.I.R. 1965 S.C. 427.

(n) *Valjibhai Muljibhai Soneji v. State of Bombay*, (1964) 3 S.C.R. 686 : A.I.R. 1963 S.C. 1890.

(o) *Secy. of State v. T. S. Murugesan Pillai*, 1929, M. W. N. 779 : 124 I.C. 158 : 1930, A.I.R. (M) 248.

(p) *Secy. of State v. Gopala Aiyar*, 59 M.L.J. 274 : 127 I.C. 609 : 1930, A.I.R. (M) 798.

(q) *Venkatapathi Raju v. State of Andhra*, A.I.R. 1957 Andh. Pra. 686.

upon the existence of a 'public purpose' and not upon the question whether the whole cost of the scheme could legally be debited to the Municipality or public body on whose behalf the acquisitions are made. A notification under s. 6 does not therefore become illegal because it seeks to acquire lands for the purpose of recouping the cost of the scheme. Where the municipality or public body has power conferred upon it under the statute creating it, to acquire land for a particular purpose, and to dispose of the land, the fact that the scheme is to be financed or partly financed out of the proceeds cannot make the acquisition illegal, (r).

It is sufficient compliance with the provisions of the proviso to s. 6 (1) of the L. A. Act, if any part of the compensation is paid out of the public funds. One anna is a part, and though a small part, is nevertheless a part, (s).

When compliance with part VII is not necessary :—If the Government acquires land for industrial development in a village (Gopalpur) and allows individuals or companies to obtain sites for building industrial unit, that would be for a public purpose and then there is no question of compliance with part VII of the Act and the declaration under s. 6 is final and conclusive subject to this exception that if there is colourable exercise of power, the declaration will be open to challenge, (t). So also in cases where land is acquired primarily for a public purpose though on behalf of a 'company' and the compensation was paid partly by the Government, (u). In case of a registered society which is a 'Company' within the meaning of s. 3(e) of the Act, there was a declaration that the land was needed for a public purpose only at the expense of the said society without stating specifically that it was needed for the said society (company) for a public purpose, the absence of the word 'company' in the declaration cannot make it bad, as there was no doubt that the land was needed for a company for a public purpose, (v).

Criteria of Public Purpose :—The position in law is quite clear on the proposition that under the provisions of the Land Acquisition Act, an acquisition can be made for a public purpose and also for a company. Where the acquisition is for a public purpose at the expense of the State or even where it is an acquisition for a company but at the expense of the State or partly at the expense of the State, then the provisions of section 6 (3) come into operation. Where the land is to be acquired for a company at its own expense, then the provisions of Part VII of the Act come into operation and is headed "Acquisition of land for companies". But the companies also must have to acquire land for public purposes but such public purposes are conditioned by s. 40 in part VII of the Act. A clear distinction is to be maintained between a case where there is a public purpose and land was being

(r) *Purshottam v. Secretary of State*, 39 Bom. L. R. 1257 : 174, I. C. 67 : 1938, A.I.R. (B) 148.

(s) *Suryanarain v. Province of Madras*, I. L. R. (1946) Mad. 153 : 58, L. W. 480 : 1945, M.W.N. 511 : (1945), 2 M.L.J. 237 (F. B.) : 1945 A.I.R. (M) 394 : 221, I.C. 415.

(t) *Tincori Das v. L. A. Collector*, 70 C.W.N. 1100 (D.B.).

(u) *Jhandulal v. State of Punjab*, A.I.R. 1961, S.C. 343.

(v) *Chirkut Tewari v. State of West Bengal*, 70 C.W.N. 1 : A.I.R. 1967, Cal. 89.

acquired at the expense of the State that is to say, out of public revenues or partly out of public revenues, in which case the satisfaction of the Government that a public purpose existed, is conclusive. But if it is an acquisition for a company at the expense of the company, then the satisfaction is only conclusive on the point that it is needed for a company. In such a case all the paraphernalias of part VII shall have to be followed as otherwise it will be defective, (w). When the entire compensation is paid by a company, a notification under s. 6 should contain a clear declaration that land is needed for a company, (x).

In *Pandit Jhandulal & Ors. v. The State of Punjab*, (y) it has clearly been held that "the declaration for the acquisition for a company shall not be made unless the compensation to be awarded for the property is to be paid by a company. The declaration for the acquisition for a public purpose, similarly cannot be made unless the compensation wholly or partly, is to be paid out of public funds. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of part VII, if the cost or a portion of the cost of acquisition is to come out of public funds. In other words, the essential condition for the acquisition for a public purpose is that the cost of acquisition should be borne wholly or in part out of public funds. If, on the other hand the acquisition for a company, is to be made at the cost entirely of the company, such an acquisition comes under provisions of part VII." Jhandulal's case is also an authority for the proposition that the fact that cost of acquisition comes out of public funds in case of acquisition for public purpose, must be manifest before the declaration. Although it is true that the intention of the Government to contribute a portion of the cost of acquisition need not appear on the face of the notification under s. 4 or on the declaration under s. 6, (z), but it is absolutely essential that the declaration of intention to pay cost of acquisition wholly or partly, should precede publication under s. 6 of the Act and if this is not done, remedy is open under Art. 226 of the Constitution, (a). In the present state of affairs it has also become imperative that there should be a finding of the court both on the points of *bona-fides* of public purpose and secondly whence the cost of acquisition has come out.

Compliance with Part VII of the Act :—1. In the case of acquisition of lands for public purposes other than for companies, it has to be seen (i) whether the purpose is really relatable to public benefit or to a section of it and the acquisition is in good faith, (ii) whether the compensation money has been paid wholly or partly from public revenue or some fund controlled or managed by a local authority, (iii) the acquisition is on behalf of a public

(w) *Babu Barkya Thakur v. State of Bombay*, A.I.R. 1960, S.C. 1203, (1961), 2 S.C.A. 425 ; *Tincori Das v. L. A. Collector*, 70 C.W.N. 1100.

(x) *Shyam Behary v. State of M. P.*, A.I.R. 1965, S.C. 427.

(y) *Jhandulal v. The State of Punjab*, A. I. R. 1961, S. C. 343.

(z) *Rammurti v. Special Dy. Collector*, 1926, M.W.N. 968.

(a) *M. Venkatapathi Raju v. The State of Andhra Pradesh*, A. I. R. 1957, Andh. Pta. 686.

body or a local authority for purposes of carrying out the public objective. In this case compliance with Part VII of the Act is not necessary.

2. In case of acquisition for companies (with public purpose) it has to be seen (i) whether it is under S. 40 of the Act and relates to any of the objectives referred to therein, (ii) whether the objective of the company is beneficial to public, (iii) whether the company pays the entire compensation money itself and (IV) whether agreement etc., as provided in Part VII, are complied with.

3. *For Industrial Concerns* :—In case of an industrial concern under s. 38A of the Act, which provides the only case where a private individual or firm can get the advantage of this Act, it has to be seen that—

- (i) it is an industrial concern i.e., a manufacturing concern employing labour and capital.
- (ii) It has got not less than 100 workmen employed.
- (iii) It requires land only for housing the workers (which is the purpose).
- (iv) Provision of Part VII are complied with.

4. There is another category viz., *acquisition for public purpose for Companies*.—This category is rather a creation of the Courts by interpretation of the Act. Although the acquisition here is for a company still the primary object is the public purpose. In these cases it has to be seen (1) whether the objective is a bonafide public purpose, (2) whether the compensation money has come wholly or partly out of public revenue or out of a fund controlled or managed by a public body or local authority. (3) whether the body on whose behalf acquisition is made, is a company or a society. In these cases also compliance with Part VII is not necessary. These are generally acquisitions on behalf of Societies coming within definition of Companies under the Act. The authority for the above proposition is the Supreme Court case of (pandit) *Jhandulal and Others v. State of Punjab* (y) *ibid.* wherein land was acquired for the construction of labour colony under the Government Sponsored Housing Scheme for the Thapar Industrial workers' Co-operative Housing Society Ltd., and substantial amount of compensation came out of revenues in the form of subsidies and loans. It was contended that the Housing Society is a 'Company' within the meaning of the Act and so provisions of Part VII must be complied with. *Held* that the said purpose is a public purpose and the cost of acquisition having come out of public revenues, compliance with Part VII is not necessary as the primary objective is the public purpose. But this has given rise to a dangerous precedence, in as much as, any society or even in case of a Company within meaning of Indian Companies Act, can influence the Government to contribute a small part of compensation and thus get out of the ambit of Part VII on the ground that as the cost has come out wholly or partly from public revenues, the acquisition being for a public purpose and not for a Company. But some have cited a Single Bench decision of Andhra viz. *Harihar Prasad v. Jagannadham* (b), also to be in the line. But it is not so. The fact of this case is that a particular plot of land was acquired on behalf a Seva Sangham Ltd., for construction of a temple. It is a fact that no part of the compensa-

tion has come out of public revenues (p. 186). On the contention that, 1stly the purpose was not a public purpose and 2ndly, no part of compensation having come out of public revenues, acquisition was bad ; *held*, that the purpose was a public purpose and 2ndly that "if the acquisition is for the Company, it is not necessary that the compensation should be met wholly or partly out of public revenues," and held that the acquisition was valid without saying anything as to compliance with part VII of the Act or that it was primarily for public purpose. With due respect this is obviously a wrong decision, *prima facie* contrary to Jhandulal's case, as, the cost has not come out of any public revenue.

In *Bhagwat Dayal v. Union of India* (c), the society paying the entire compensation, held, it was primarily for public purpose and so no compliance with Part VII is necessary. The Gujarat High Court concluded in *Patil Mangalbhai Nathubhai v. State of Gujarat* (d), viz., that "it is incorrect to say that an acquisition for a company cannot be supported as an acquisition for a public purpose within meaning of Art. 31(2) of the Constitution unless part of the costs of such acquisition comes out of public funds". Both the above mentioned cases, it seems, are contrary to Jhandulal's and other cases and are of doubtful accuracy.

It may be mentioned that these anomalies have arisen because of the inclusion of the word 'Society' in the definition of 'company' under this Act by Amendment Act No. 17 of 1919. The (Indian) Companies Act 1956 does not include Societies registered under the Society Registration Act or a Co-operative Society. The probable reasons may be that the societies should also have the advantage of this Act and acquisition for public purposes, should be made through recognised public bodies such as a registered company and that they should be made to comply with part VII of the Act, But the decisions of the Courts show their inclination to differentiate between an acquisition on behalf of a public body such as a society etc., and a company within the meaning of the (Indian) Companies Act. They feel that acquisition for purposes of public benefit, on behalf of a Society, whether the cost of acquisition comes out of public revenue, or not, should be free from application of Part VII, while if it is for a company within meaning of (Indian) Companies Act and wherein the Companies are bound to pay entire cost of compensation, they should be bound to comply with Part VII of the Act. This anomaly could have been obviated if instead of including the 'Society' within the definition of "Company" a separate provision was made providing to the effect that acquisition for public purposes can be made on behalf of Societies registered under the Societies Registration Act as also on behalf of Co-operative Societies registered under the Co-operative Societies Act and that in those cases compliance with Part VII would not be necessary.

Effect of 1962 Amendment :—When acquisition proceedings commenced under Part VII of the Act but did not complete before 1962 Amendment

(c) *Bhagwat Dayal v. Union of India*, A.I.R. 1959, Punj. 479.

(d) *Patil Mangalbhai Nathubhai v. State of Gujarat*, A.I.R. 1964, Guj. 52.

Act came into force, it is essential that the procedure in Part VII should be followed, (e).

Acquisition for companies :—Part VII—As has already been stated all acquisitions for the companies must also be for public purposes.

S. 40 includes within it the public purposes. s. 40 (1) (a) which is 'erection of dwelling houses for workmen' is declared a public purpose in *Babu Barkya Thakur's* case. Other clauses of s. 40 are expressly stated to be of public purposes. It is wrong to suggest that no public purpose is needed for acquisition for companies. The cases of *Shantiniketan Co-operative v. Madhavlal* (f) and *Harihar Prasad v. Jagannadham* (g), are no authorities for this proposition, as suggested by some. At best it can be stated that in case of acquisition for company, if it is within meaning of s. 40, public purpose may not be expressly stated but if it is outside the ambit of s. 40 such as acquisition for construction of temple for a Sangha, it shall have to be stated, (h) & (i).

What is a company.—See notes under s. 3(e).

(4) & (5) *For construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose* [S. 40 (aa)] :—

Manufacture of refrigerator parts, is a public purpose, (j).

Manufacture of textile machine parts is not a public purpose, (k).

For providing hospitals for workmen.

For providing Schools for workmen.

For providing recreation arrangements for workmen.

For medicine factory.

For opening of slaughter houses.

Work :—What is 'work' for public purpose ? As has already been stated any work by a company or society that benefits the public in any manner, is a public purpose. But this is a very wide term. As Sarcar J. in dissenting judgment in *Aurora's* case pointed out that any thing that is produced by a company helps the public or a section of it in some way or other and so land should be acquired for them. But this was not accepted by majority of the judges who held that mere production of goods is not a public purpose. This is true, because these manufacturing companies primarily work for their private gains irrespective of any public benefit which is only a part of their efficiency and market competition. It is very difficult to draw a demarcation line as to which production is for public benefit and which is not. Even production of birth control goods are, now a days, for public benefit. Beginning from production of a pin to a big ship or air plane, all helps the public. But this is not the objective of the Act. The conflict in decisions of *Aurora's* case refusing acquisition on the ground that manu-

(e) *P. Iyengar v. State of Madras*, A.I.R. 1965 Mad. 50.

(f) *Shantiniketan Co-operative v. Madhavlal*, 60 B. 125 ; 37, B.L.R., 955

(g) *Harihar Prasad v. Jagannadham*, A.I.R. 1955, Andh. Pra. 184.

(h) *Babu Barkya Thakur v. State of Bombay*, A.I.R. 1960 S.C. 1203.

(i) *Jhandulal v. State of Punjab*, A.I.R. 1961, S.C. 343.

(j) *Somawanti v. State of Punjab*, 1963 (1) S.C.A. 548.

(k) *Aurora v. State of U.P.* 1962 (1) S.C.A. 182. *Ranibala Bhar. v. State of West Bengal*, 62 C.W.N. 73.

facture of machine parts is not a public purpose while in Somawanti's case manufacture of refrigerator parts has been held to be public purpose, cannot easily be understood. It seems that the decisions of Somawanti's and other cases have frustrated the objective of this Act as stated by Hon'ble Mr. Bliss already quoted. What Mr. Bliss intended seems to be that production of goods in itself will not be public purpose but if they are produced solely for public benefit disregarding personal profits and for which there is a public necessity i. e., some medicines etc., which are wanting in India, then these may be public purposes. These establishments may be organised on request by the Government or other public bodies for public benefit i.e., Public Utility Companies etc., (l). It does not contemplate erection of a new factory, (m). A Company obtained a license for manufacture of high alumina bricks and was a scheduled industry under the Act. It was held to be to promote public purpose, (n). In *Radha Raman v. State of U. P.* (o), it was also held that construction of number of houses by a Society formed for the purpose, is a work within meaning of the Act and is a public purpose.

Acquisition for local bodies :—Acquisition may be made either for the benefit of the Union, or the State or for the benefit of public or local authorities. Local authority as defined in the General Clauses Act means 'a Municipal Committee, district board, body of port Commissioners or other authority...legally entitled to or entrusted by the Government with the control or management of municipal or local funds.' Public authorities will include State-owned or State-controlled Corporations. Besides these, acquisition is also permitted under the existing law for the benefit of companies and co-operative societies or friendly societies, public charitable trusts, hospitals, educational institutions etc. There are also town planning authorities and town improvement and rural areas improvement boards etc.

Where acquisition is for a local body, the Court can go into the question if the purpose is within the statutory jurisdiction of the body concerned, (p).

But a local body can use the acquired property for a divergent purpose other than the proclaimed ostensible purpose provided the other purpose is within its statutory function, (q).

Acquisition for commercial purposes :—Land used for the purpose of a Railway though really used for commercial purposes, is for public purpose. Government may in many ways use land for purposes which are really commercial. The business of the Post Office is really as much a commercial concern as the business of a Railway Company and the same may be said of such undertakings, telephone or communications by air-crafts which might be taken over by the Government. It is difficult to see that land acquired

(l) *Ranibala Bhar v. State of West Bengal*, 62 C.W.N. 73, relies on A.I.R. 1954 Mad. 481.

(m) *R. L. Aurora v. State of U. P.* (1962) 1 S.C.A. 182.

(n) *Shyam Behary v. State of M. P.*, A.I.R. 1962 Madh. Pra. 80.

(o) *Radha Raman v. State of U. P.*, A.I.R. 1954 All 700.

(p) *Shastri Ram Chandra v. Ahmedabad Municipality*, 24 Bom. 600.

(q) *Luchmeswar Singh v. Chairman, Darbhanga Municipality*, 18 Cal. 99.

for such purposes would not be for public purposes. Therefore land acquired for the purpose of uses in connection with a Railway owned by Government which can be used for strategic as well as for commercial purposes must be held to be acquired for public purposes. *In the matter of Indian Stamp Act*, 1899, 58 Bom. 437.

Declaration conclusive of "public purposes".—The declaration is ordinarily conclusive evidence that the land is needed for 'public purpose or for a company.' The notification under S. 6 of the L. A. Act is conclusive so far as S. 4 of the Evidence Act is concerned, (r). It was held that the legislature in the L. A. Act has expressly constituted the local Government the sole arbiter as to what land should be acquired for public purposes, (r). A court has no jurisdiction to enquire into the question whether the purpose for which the land, in respect of which a declaration under it has been issued, is a public purpose or not, (s).

This does not affect the right of the claimant to institute a suit to have it declared that the Board in framing the scheme acted *ultra vires*, (r).

Declaration when colourable :—A declaration as to public purpose of acquisition is final except where it is colourable exercise of power. Whether the exercise of power is colourable being collusive or *mala fide*, is a question of fact. The Supreme Court will therefore ordinarily refuse in an appeal to review the evidence in a case where there are concurrent findings of fact, unless there are exceptional reasons, (s). Conclusiveness attached by S. 6 was only to the extent that the land was needed for public purpose of a company but that did not support an acquisition which did not comply with strict requirements of chapter VII of the Act, (r).

Public purpose : Justiciability :—The question whether the acquisition was for a public purpose, is justiciable, (u). If the Government in exercising the powers under the Act, does not comply with any of the mandatory provisions of the Act, its action is *ultra vires*, consequently the acquisition proceedings are bad and have no validity. The conclusiveness of the declaration is based on the assumption that the declaration has been made within the jurisdiction after complying with the provisions of S. 5-A and after being satisfied that the land in question is needed for a public purpose or for a company. So if any of the provisions have not been complied with, the declaration is without jurisdiction. In such a case Art. 226 of the Con-

(r) *Manick Chand Mahto v. Corporation of Calcutta*, 48 Cal. 916 ; *Balavant Ramchandra v. Secretary of State*, 29 Bom. 480 ; *Shastri Ramchandra v. Ahmedabad Municipality*, 24 Bom. 600 ; 2 Bom. L.R., 395 ; *Secretary of State v. Akbar Ali*, 45 A. 443 ; 21, A.L.J. 338 ; 74, I. C. 8 ; *Ezra v. Secy. of State*, 32, I. A. 93 (P.C.) ; 9 C.W.N. 454 (P. C.) ; *Trustees for the Improvement of Calcutta v. Chandra Kanto Ghosh*, 44 Cal. 219 ; 47, I. A. 43 (P. C.) ; 47 Cal. 500 ; 32 C.L.J. 65 (P. C.) ; *Municipal Corporation of Bombay v. Ranchordas Vandrabondas*, 1925, A.I.R. (B) 538.

(s) *Valjibhai Muljibhai Soneji v. State of Bombay*, 1963, 3 S.C.R. 686 ; A. I. R. 1963, S. C. 1890.

(t) *R. K. Agarwalla v. State of West Bengal*, A.I.R. 1965 S.C. 995.

(u) *Luchmeswar Singh v. Chairman Darbhanga Municipality*, I.L.R. 18, Cal. 99 ; *Ponnala v. Secretary of State*, A.I.R., 1926, -M, 1099,

stitution is applicable. It is not within the province of the Court to hold that the declaration is bad unless, the Government has acted in fraud of its power, as where the acquisition proceedings are merely colourable or made a cloak for acquisition under guise of a public purpose or made *mala-fide* with an improper purpose, (u) or that the land is stated in the declaration to be needed for a particular purpose, but the purpose clearly is not, in the eye of law, a public purpose, (v). In *Radha Raman v. The State of U. P.* (w), a notification was issued by the U. P. Government under Sn. 4 of the Act which stated that the land was needed for the purpose of construction of residential house for the members of a society. Before a declaration was made, the petitioner applied for a writ to quash all proceedings under Sn. 5-A, 39, 40 and 41 of the Act and to prohibit the issue of a notification under this section. The Court held that aforesaid acquisition cannot be useful to the public. In *Ezra v. The Secretary of State* (x), it has been held that section 5-A gives a right to file objections to the acquisition within 30 days of the notification made under Sn. 4 and that objection is to be determined after giving the objector an opportunity of being heard. So the function of the Collector is a quasi-judicial function. Sn. 40 of the Act prohibits the State Government from giving consent to the acquisition unless it is satisfied that such acquisition is needed for a public purpose. Till the sanction is given, S. 39 says that the provisions of Ss. 6 to 37 shall not be put into force. "This being the state of law, if the petitioner says that the Government is about to give its consent to the acquisition and the acquisition is such that it cannot possibly prove useful to the public, I am of opinion that the Court can prohibit the Government from giving its consent under S. 40 or from issuing a notification under Sn. 6." (See notes under S. 3).

An Under-Secretary of the Gujarat State Government is competent to sign the notification under section 6 as a Secretary. Further the Under-Secretary was undoubtedly competent as an officer duly authorised by virtue of rule 13 of the Rules of Business and that is all that is required and if the authority of the Government is challenged, an issue should be raised whether any one at all formed an opinion and if he did, whether he had the necessary authority to do so, (y).

The Privy Council dictum in *Ezra's* case, that once the publication of declaration is proved, it is deemed adequate proof that the land is needed for a public purpose. It is final and can not be open to challenge in a civil court, is the basic principle but its unchallengeability has been broken by

(v) *V. Gopalakrishna v. The Secretary, Board of Revenue*, A. I. R. 1954, Mad. 362 ; *Luchmeswar v. Chairman, Darbhanga Municipality*. I. L. R. 18, Cal. ; 99 P. C., *Trustees for the Improvement of Calcutta v. Chandrakanta*, 44 Cal. 219 : 47 I. A. 43 (P. C.).

(w) *Radha Raman v. The State of U. P.*, A. I. R. 1954 A, 700.

(x) *Ezra v. The Secretary of State*, I. L. R. 32, Cal. 605 ; *Valjibhai v. State of Bombay*, A. I. R. 1963 S. C. 1890 ; *Hiralal Harjivandas v. State of Gujarat*, I. L. R. (1964), Guj. 814 ; *R. K. Agarwalla v. State of West Bengal*, A. I. R. 1965, S. C. 995 ; *State of West Bengal v. P. N. Talukdar*, A. I. R. 1965 S. C. 646.

(y) *Ishwarlal Girdharilal Joshi v. The State of Gujarat*, 1968 (1) S. C. A. 569 : A. I. R. 1968 S. C. 970.

various sidewise interpretations e. g., in *Hemabai Framji v. Secretary of State* (z), it has been held that it is open to the court to consider whether a purpose which was declared to be a public purpose was really a public purpose or not. It should be noted that the *Ezra's* case or Section 6 (3) only provides that a declaration that the acquisition is for a public purpose, shall be conclusive evidence but it does not take away the right of suit. In *Veeraraghavachariar v. Secretary of State*, (a), *Ezra's* case has been distinguished on the ground that the acquisition in that case was under Part VII of the Act and the question there was whether S. 40 was satisfied, if that be so, no complaint can be made. But here acquisition is not under Part VII but under sections 6, 7, 8 & 9 of the Act. So a claimant can file a suit for a declaration that the purpose was *ultra vires*. The court can enquire into its validity (b), though the section is *intra vires*. Illegality in the procedure and material violation of the provisions of the Act will render the declaration under S. 6 nugatory.

As an 'existing law' the Act 1 of 1894 itself stipulates public purposes under sections 4, 5A, 6A and 40 even for a company. If acquisition is for a company under any new law, the Art. 31(2) of the Constitution is mandatory and a public purpose is necessary. Such a purpose is also justiciable. In *Jhandulal v. State of Punjab* (c), it was also held that since part of the compensation came out of public revenues, the acquisition is not for a company *simpliciter* and so procedure laid down in Part VII is not applicable. The court held a notification bad in case of *State of West Bengal v. P. N. Talukdar* (d), where the acquisition for Ramkrishna Mission for building staff quarters which falls under cl. (b) but the Government having declared only cl. (a) and further the compensation having been paid by the mission wholly, it was not a public purpose.

If the declaration is colourable or in exercise of fraud of the power of the Government, it is justiciable, (e). In case of *Bhagwat Dayal v. Union of India* (f) the entire compensation was paid by a Co-operative House Building Society for erecting residential houses for its members, it was held that though no part of the compensation having come out of public funds, the acquisition being primarily for a public purpose, it is valid and compliance with Part VII is not necessary although the Society is a 'company' within the meaning of the Act. In *Harihar Prasad v. Jagannadham* (g), compensation though entirely paid by the Society, it was held to be for public purposes primarily. The correctness of these two decisions is controversial. If fraud is alleged

(z) *Hemabai Framji v. Secretary of State*, 39 Bom. 279, (P. C.)

(a) *Veeraraghavachariar v. Secretary of State*, A.I.R. 1925 Mad. 637 : I.L.R. 49, Mad. 237.

(b) *Manick Chand Mahto v. Corporation of Calcutta*, 48 Cal. 916.

(c) *Jhandulal v. State of Punjab*, A. I. R. 1961, S. C. 343.

(d) *State of West Bengal v. P. N. Talukdar*, A.I.R. 1965 S.C. 646 ; *Chandra Kanta Sharma v. Dy. Commissioner & Collector, Nowgong*, A.I.R. 1971, Ass. & Nag. 1, (F. B.).

(e) *Tincori Das v. L. A. Collector*, 70 C.W.N. 1100.

(f) *Bhagwat Dayal v. Union of India*, A. I. R. 1959, Punj. 479.

(g) *Harihar Prasad v. Jagannadham*, A.I.R. 1955 Andh. Pra. 184.

and could be proved, a suit lies, but no suit lies if no fraud is alleged, (h). If mandatory provisions of S. 5-A are not complied with, the declaration under S. 6 can be successfully attacked in a writ petition, (i). The acquisition for the purpose of extracting exemption fee is *mala fide*, (j). A court has jurisdiction to examine a public purpose till a notification is issued under section 6 but not after, (k). The courts will interfere if there is evidence to show that the acquisition is not in *bona fide* exercise of power or that it is a fraud on the Statute, but a mere payment of a nominal part of compensation will not render it invalid (i) *ibid*.

Public Fund :—Under S. 6(1) Proviso, the fund out of which the cost of compensation is to be met is the public revenue or some fund under the control of a local authority, in case of acquisition for a public purpose. So, it must be either a fund belonging to Government Treasury or to some other statutory bodies. Funds of all public institutions are not funds under this section. A fund raised by villagers can not attract this provision even if it is deposited into State Treasury, (l).

'Public revenues' are the monies lying in the Government Treasuries operated by Government departments as such. Monies invested, loaned or granted by the Government to a public institution would change their original character and become fund of such institution. The State Transport Corporation is a company and certainly not a department of the Government but is a separate legal entity and monies coming out of it though originally belonged to the Government, now belongs to the Corporation, and so it is not public revenue. So provision of Part VII must have to be complied with, (m). When the entire amount is paid by a School authority for land acquired for its benefit, it can not be said that it has come out of public revenues, merely because it was deposited in the Government Treasury, (n).

Local Authority :—'Local authority' is not defined in the Land Acquisition Act, but it is defined in s. 3 (31) of the General Clauses Act as 'a municipal committee, district board, body of Port Commissioners or other authority legally entitled by the Government with the control or management of a municipal or local fund'. The definition itself opens with the statement that the meanings assigned by it to several terms are to apply unless there is anything repugnant in the subject or context. So the definition would not apply if it is repugnant to the context or subject. In some cases prior to the decision of Valjibhai's case (m), *ibid*, it has been held that a Road Transport

(h) *Vodlapattee Suryanarayana v. Province of Madras*, 1945, Mad. 394 (F. B.).

(i) *Rajendra Kumar v. Govt. of West Bengal*, A. I. R. 1952 Cal. 573 ; 56 C.W.N. 156 ; *Rabindra Nath v. Sakti Bhusan Ray*, 54 C.W.N. 793.

(j) *Trustees for the Improvement of Calcutta v. Chandra Kant*, A.I.R. 1920, P.C. 51.

(k) *Province of Bombay v. Khushaldas*, A.I.R. 1959 S. C. 222 ; *Brij Nath Sarin v. U. P. Govt.* A.I.R. 1953 All. 182.

(l) *Heisan Chanjan Singh v. Union Territories of Manipore*, A.I.R. 1968, Mani. 45.

(m) *Valjibhai Mooljibhai Soneji v. The State of Bombay*, 1963 (3) S.C.R. 686 : A.I.R. 1963, S.C. 1890 : 1964, S.C.J. 639.

(n) *Chandra Kanta Sharma v. Dy. Comm. & Collector, Nowgong*, A.I.R. 1971, A. & N. 1 (F. B.) ; *Chena Veerappa v. State of Mysore*, (1968) 1 Mysore L.J. 300.

Corporation is a local authority, (o), but since Valjibhai's case these are no longer good laws. A group of villagers is not a local authority (p), but a District Board School is a local authority, (q). The committee of a school board is not a local authority (n). *ibid*. It may be noted that the L. A. Collector being an agent of the Government in acquisition matters, with many *quasi-judicial* functions, is not a 'local authority' under this definition.

Suggestion on the 2nd Proviso to S. 6(1) :—This second proviso to section 6(1) has created a good deal of complications and frustrations as shown above. Many acquisitions, where a public institution being in a position to pay the compensation, has paid it through the Government Treasury, have been held to be void as part VII has not been complied with, nor the compensation having come out of public revenue. It may be stated that it may not be possible for the Government to pay even a small part of compensation from its revenue in case of all public institutions although they are for public purposes.

Secondly, why should the Government be forced to pay if a public institution itself is in a position to pay? Thirdly, it is immaterial for the owner of the condemned land from whatever source originally the money has come, it may be enough for him when the Collector has paid. Fourthly, much of the Government monies would be saved if those institutions themselves pay, so that large number of public institutions may avail of this opportunity for public benefit. So really there is no utility of this proviso. In case of companies also there may be some special cases where it may be necessary for the Government to spend its money for expanding productions for public welfare. That the purpose is a public purpose is sufficient.

So it is suggested that the entire proviso or at least the portion "or wholly or partly out of public revenues or some fund controlled or managed by a local authority" should be deleted or alternatively the Collector or some other officer of the Government should be invested with the power of a 'local authority' by maintaining a fund out of Government revenues for the purpose.

Justiciability and how it is challenged :—In a writ petition the justiciability as to public purpose may be challenged generally on the following grounds *inter alia* :—

- (1) That the acquisition is *malafide* in, as much as, the purpose disclosed in the notifications under Ss. 4 & 6 are not really public purpose.
- (2) That it is colourable exercise of power by the Government conferred on it by the Act.
- (3) That it is intended for the benefit of particular individual, Firm or a Company.

(o) *Abdul Azeez v. Mysore R. A. Tribunal*, A.I.R. 1962 Mys. 31 : *R. Sarangapani v. Port Trust of Madras*, A.I.R. 1961 Mad. 234 ; *Official Assignee v. Trustees of Port Trust*, A.I.R. 1936 Mad. 789. See also A.I.R. 1962 Andh. Pra. 323.

(p) *Heisnam Chanjan Singh v. Union of Territories of Manipore*, A.I.R. 1968, Mani. 45.

(q) *China Veerappa v. State of Mysore*, (1968) 1 Mys. L.J. 300 ; *Chandra Kanto Sharma v. Dy Commissioner & Collector, Nowgong*, A.I.R. 1971 A. & N. 1, (F.B.).

- (4) That the notifications are bad for vagueness and they do not disclose as to the purposes of the acquisition and do not convey any clear or adequate picture of the purpose.

In all the above cases evidences in support of the petition annexed therewith must be *prima facie* substantial and that justice has been demanded before coming to Court.

- (5) That the petitioner has been deprived of his right under Sec. 5A of the Act to object to the proposed acquisition by reason of the vagueness of the notifications, In this case the petitioner must ask for full particulars of public purposes before coming to Court and it must be stated that he has not been furnished with any particulars in spite of his asking.
- (6) That the cost of acquisition having not come out of public revenue or a fund, it is not a public purpose.
- (7) That provisions of Part VII have not been complied with (in case of company) cost being borne by Company.
- (8) That the work of the agency on whose behalf acquisitions are made, is not relatable to public purpose.
- (9) That the production of particular goods by a Company in itself, is not a public purpose being not relatable to public benefit.
- (10) That there has been improper excessive delegation of powers to the Collector (if any).
- (11) That the purpose to which the law is put is not declared in the notification. All the above allegations must be *prima facie* satisfactory on the petition from the annexures.

Justiciability, how it is defended :—Although it is not necessary that details of purposes are to be disclosed in the notifications, but still when it is challenged, full details of the purposes and on whose behalf the acquisition is made should be disclosed by affidavit, in as much as though the Indian Evidence Act in terms does not apply to affidavits but the principle underlying the illustration to s. 144 (g), that is to say that the presumption that evidence which could be and is not produced, would if produced be unfavourable to him who withholds it, is of general application. Statements in affidavit in opposition as to public purposes, must be in detail, clear and specific supported by proper evidences. If it is for a public purpose, whence the cost of acquisition has come, must be clearly stated. It should also be clear that the agency on whose behalf acquisition is made, is a public body and is capable of carrying out the objective. If it is for a company, the objectives are as described in s. 40 and that provisions of Part VII are complied with. If such compliance is not necessary, it must be shown that primarily it is for public purpose although it is on behalf of a Company and the cost having come out of public fund or revenue. That particulars asked for by the petitioner, have been duly supplied.

That there has been no colourable exercise of power or fraud on the

Statute or that the notifications and consequently the acquisitions are *bona fide*, etc., (r).

Permanent Public Purpose :—The Act nowhere provides that when land is acquired for a company it should be acquired for a permanent public purpose or for a permanent company, *Ezra v. Secretary of State*, (s).

State Purpose-Welfare State-Slaughter-House—declared and undeclared purpose :—In *Gadadhar Ghosh & Ors. v. The State of West Bengal*, *ibid*, it was held that Art. 162 and 73 of Constitution indicates that the powers of the Union executive do extend to matters on which the Parliament is competent to legislate and not confined to legislations already passed. Same principle underlies Art. 162 of the Constitution. *Ram Jawaya Kapoor v. The State of Punjab* (t), referred. It is no argument that a State cannot even establish a slaughter house or a drug factory because the State Legislative List does not contain a specific entry to that effect. A modern State is a social service or Welfare State and so both the Union and the State may launch upon such projects, if they are of social service projects.

On a further contention that the aforesaid acquisition for annihilation of animals was against the directive principle of Art. 48 of the Constitution, *held* that so long as laws are not made under the one or other of the directives, an executive action must not necessarily be condemned as violating the directive principles.

Held further that after the Constitution (Seventh Amendment) Act, 1956, deleting entry 33 in List I and entry 36 in List II and also amended entry 42 of List III, the Concurrent List, to which latter entry now reads merely as 'acquisition and requisition of property', the disclosure that the acquisition of land was being made for a purpose which was not the purpose of the Union, in the notification, was not necessary.

It was further held that under sub-section (4) of section 17 of the Land Acquisition Act the opinion which the Govt. has to form relates both to the urgency as well as to the nature and condition of the land, that is to say, whether the land is waste or arable. The correctness of the opinion cannot voice a justiciable issue unless it can be shown that such an opinion was only a pretended opinion or an opinion formed in *mala fide* exercise of the discretion vested in the Government. *Prima facie* the Govt. may be the best judge but not the sole judge as to whether an acquisition is for a public purpose. Courts have the jurisdiction and it is their duty to determine whether the acquisition is or is not for a public purpose, (u).

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- (r) *Somawanti v. The State of Punjab*, A.I.R. 1963, S.C. 151.
Arnold Rodricks v. State of Maharashtra, A.I.R. 1966, S.C. 1788.
Babu Barkya Thakur v. State of Bombay, A.I.R. 1960, S.C. 1203.
Durga Prosad Mukherjee v. L. A. Collector, 71 C.W.N. 499.
Gadadhar Ghosh v. State of West Bengal, 67 C.W.N. 460.
Jhandulal v. State of Punjab, A.I.R. 1961, S.C. 348.
Amarendra v. State of West Bengal, 67 C.W.N. 647.
R. L. Aurora v. State of U. P. (1962) 1 S.C.A. 182.
Ranibala Bhar v. State of West Bengal, 62 C.W.N. 73.
(s) *Ezra v. Secretary of State*, 7 C.W.N. 249.
(t) *Ram Jawaya Kapoor v. State of Punjab*, 1955 S.C.A. 577.
(u) *State of Bombay v. Nanji*, 1956, S.C.A. 308 (314).

It was further held that although it may not be necessary to declare the exact nature of the public purpose in the notification as laid down in *State of Bombay v. Bhanji Munji* and in *Babu Barkya Thakur's case (ibid)*, still if the purpose be challenged before a court of law, the same has to be established by evidence *aliunde*. But the converse of the above is not a legal proposition, namely, when the purpose is expressly stated in the notification or the declaration and that is challenged as being not a public purpose, it does not become permissible to add to that purpose other purposes, not notified or declared and try to support the land acquisition both on the notified and declared purpose and also on the unnotified and undeclared purpose. In the instant case the declaration for acquisition, being only for a slaughter house and not for medicine factory, was quashed on the aforesaid ground and the joint petition for writ or mandamus was held to be maintainable as it was for quashing the one notification common to all.

Diversion of purpose.—Diversion of purpose from that which is expressly stated in the declaration is *prima facie* objectionable, (v). In case of companies they are bound by agreement under s. 41 of the Act and so they can not divert the purpose. But in case of local authorities they can divert the purpose if the new purpose is also one within the statutory powers of such authority, (w). Under the English law, the promoters are required to sell the land if not required for the purpose for which it was acquired and unless the land is situate in a town or is used for building purpose, they must offer it to the original owners who have a right of pre-emption, (x). Public purpose added but undeclared is wholly void, (y).

Existing public purpose no bar for acquisition for fresh public purpose :—The power of *eminent domain* of the State is a sovereign power which overrides all other rights and in the absence of any specific constitutional prohibition, there is nothing to bar the taking of land already devoted for a public purpose for another public purpose. In *Syed Abdul Gaffar v. State of West Bengal (z)*, the property sought to be acquired is a wakf property also a public purpose and it was contended that this land could not again be acquired for another public purpose. The contention was rejected.

Public Purpose and Private Parties :—The preamble of the L. A. Act and sections 4, 6 and 40 of the Act as also the Constitution lay down that acquisition shall be.—(1) for public purposes, (2) for companies having public utility ; (3) for industrial concerns not being a company, thus in general laying down the principle that all acquisitions must be for public purposes and that there can be no acquisition for private purposes.

(v) *Gurudas Kundu Chowdhury v. Secretary of State*, 18 C.L.J. 244.

(w) *Maharaja Luchmeswar Singh v. Chairman Darbhanga Municipality*, 18 Cal. 99 (P. C.).

(x) *London & S. W. Ry. v. Gomm.* (1886) 20n, Ch. D. 562.

(y) *Gadadhar Ghosh v. State of West Bengal*, 67 C.W.N. 460.

(z) *Syed Abdul Gaffar v. State of West Bengal*, 73 C.W.N. 649 ; *West River Coy. v. Dix.* (1848), 6 How. 507 ; *Suryapal Singh v. State of U. P.* (1953) S.C.A. 932 referred to.

The question arises that although the purpose may be public, but is it necessary that the parties for and on behalf of whom acquisitions are made, should be public bodies or they can be private individual or individuals?

Nowhere in the Act there is any bar for the private parties to be selected as agency for carrying out the public purpose after acquisitions are made on their behalf, provided they can show public purpose as their objectives excepting in case of 'Private Company'. A notification under s. 4 need not mention for whose benefit the acquisition is being made, (a).

But this seems to be a loophole in the Act. The judiciary in India feel that no private party should be benefitted in the name of public purpose and that is why in some cases they have attempted to satisfy themselves from evidences that private agencies are *bona fide* and are capable of carrying out the purposes. But it is doubtful whether in view of the satisfaction of the Government obtained on enquiry under secs. 4 and 6, the Courts have any jurisdiction to go into the *bona fides* of the parties on whose behalf acquisitions are made for carrying out public purposes.

This aspect was to some extent considered by the Supreme Court in *Surya Pal Singh v. The State of U. P. and also in State of Bihar v. Kameswar Singh*, (b). In this latter case Mahajan J. observed "the point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from private interests of the individual. Dr. Ambedkar is right in saying that in the concept of public purpose there is a negative element in that no private interest can be created in the property acquired compulsorily, in other words, property of A cannot be acquired to be given to B for his own private purposes and that there is a positive element in the concept that the property taken must be for public benefit". "The sovereign power to acquire property compulsorily is a power to acquire it only for a public purpose. There is no power in the sovereign to acquire private property in order to give it to private persons".

"Whether the primary object is the personal gain whether of private individual or of a company and the public benefit resulting therefrom is too remote, the purpose cannot be said to be public purpose, (c). In *R. L. Aurora v. State of U. P.* (d), it was held that acquisition for the purpose of Cl. (aa) of S. 40(1) can only be made for a Government Company or a public company and cannot be made for a private company or a private individual even though they are engaged in industries which may be for public purpose.

In *Bhagwat Dayal v. The State of Punjab* (e), their lordships went to consider whether acquisition made on behalf of a Co-operative Society was *bona fide* in view of disputes raised as to bonafides of the society itself and were pleased to observe :—"When Courts are considering whether or not a particular piece of land has been acquired for a public purpose, it is

(a) *Budhi v. State of Punjab*, A.I.R. 1964, Punj. 300.

(b) *Surya Pal Singh v. State of U. P.* 1952, S.C.R. 1056 ; A.I.R. 1952, S.C. 252 ; *State of Bihar v. Kameswar Singh*, 1952, S.C.R. 889 : A.I.R. 1952 S.C. 252.

(c) *Veera Raghavachari v. Secy. of State*, 49 Mad. 237.

(d) *R. L. Aurora v. State of U. P.* 1965 (1) S.C.A. 12 (25) : A.I.R. 1964 S.C. 1230.

(e) *Bhagwat Dayal v. State of Punjab*, A.I.R. 1959 Punj. 544 (D.B.).

cumbent upon them to consider the agency selected for achieving that purpose. The agency selected for achieving a public purpose is an integral part of the public purpose." Their Lordships further observed that if the agencies consist of some speculators then the intention of the acquisition may be frustrated.

Now many possible evils may arise out of selecting private persons as agencies for acquisition for carrying out public purposes. So it is desirable to follow *Aurora's Case*, *ibid*, also *Surendra Nath Bhattacharya v. L. A. Collector*, (e-1).

Provision of village sites :—Where an acquisition of land is declared by the Government as being made for a purpose which the legislature declared to be a public purpose, it is not open to the court to go into the question whether the purpose is a public purpose or not. "Where the legislature has acted within power it is not open to a Municipal Court to question the legality of the provisions of the enactment passed by the legislature. If an enactment or any provision thereof is *ultra vires* of the legislature, it would be open to the Court to question the legality of the enactment or its provisions. A village site is not land reserved in a village for communal purposes but land which is reserved for being parcelled out as house sites and also all lands on which houses have been built".(c) *ibid*.

Acquisition of protected monuments :—A protected monument may be acquired under this Act as if its preservation were a "public purpose" within the meaning of the Act, (See s. 10 of the Ancient Monuments Preservation Act, VII of 1904). Similar provision has been made in section 13 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, (Act XXIV of 1958).

Notification by the Government :—Acquisition of village sites is for public purpose only in those districts in which the government has declared by notification in the official gazette that it is customary for government to make such provision. For instances of such notifications, see *Burma Rules Manual* ; see also *Burma Gazette*, 1899, Pt. I. p. 297, *Bombay Local Rules and Orders* and *Coorg Local Rules and Orders*.

Clause (g) ; Persons entitled to act :—Section 3(g) of the L. A. Act I of 1894 has been taken from sections 2 & 7 of the Lands Clauses Act, 1845, to enable the Government, the acquiring body in India, to treat with persons not having the right to convey an absolute title.

Persons competent to acquire :—The authority to acquire land in India is vested in the Government though under certain Acts the local authorities are empowered to acquire in their own behalf. Under the English law the authority to purchase or to take lands is given to the persons empowered by the special Acts to execute the work or undertaking for which they are required. Under most of the Acts, it is the appropriate Government through its Collector, is the acquiring authority.

Persons competent to sell :—The persons authorised, or who can be compelled to sell and convey lands to the promoters of the undertaking, are

in the Lands Clauses, Act, 1845, denominated "owners". Section 3 of that Act defines the term "owner" thus : "where under the provisions of this special Act or any Act incorporated therewith, any notice shall be required to be given to the owner of any land, or where any act shall be authorized or required to be done with the consent of any such owner, the word 'owner' shall be understood to mean any person or corporation who under the provisions of this or the special Act, will be able to sell and convey lands to the promoters of the undertaking." Section 7 completes the definition of "owner" by describing what persons or corporations are enabled to sell and convey lands to the promoters of the undertaking. It is the general intention of this section to give every class of persons and corporations the power to sell and convey, since an omission might render the completion of an undertaking impossible except through a fresh application to Parliament. Section 7 commences with a general power enabling all parties to sell and convey any lands, or any interests in lands of which they are possessed, or to which they are entitled, to the promoters of the undertaking. These general words do not include the Crown whose rights are not affected without special mention by an act of Parliament.

Trustees and Executors :—Trustees or feoffees in trust for charitable or other purposes, executors or administrators, and all parties for the time being entitled to the receipt of rent and profits of any such land in possession, or subject to any state in dower, or to any lease for life or for lives and years or for any less interests.....these general words are intended to authorize a trustee to convey when the *cestui que trust* is under disability and cannot himself convey ; but they do not empower a bare trustee for an absolute owner to sell and convey so as to bind a *cestui que trust* who is not under any disability. A married woman having the properties settled to her separate use, is in the position of a *cestui que trust* not under disability, and her trustee cannot, nor this section gives a valid conveyance to bind her interest in the lands. The promoters unless the *cestui que trust* is under a disability, must treat with the beneficial owner and cannot disregard him by negotiating solely with his trustee. Cripps on the Law of Compensation, 5th Ed., Ch. IV, p. 44.

Shebait :—The position of a shebait is analogous to that of the manager of an infant. He is entitled to possess and to manage the dedicated property, but he has no power of alienation in the general character of his right, (e-2). Land dedicated to an idol or to religious and charitable purposes, is land belonging to the shebait or trustee who has no power to alienate the same. Where a portion of the debutter property was acquired under the L. A. Act, and the compensation money was invested in approved securities, the shebait was entitled to withdraw a portion of the invested funds and apply the same to effect necessary repairs to the remainder of the debutter property, (f).

(e-2) *Ramprasanna Nandi v. Secy. of State*, 40 Cal. 895 : 19 C.W.N. 652.

(f) *Kamini Debi v. Pramotha Nath Mukherjee*, 39 Cal. 33 : 13 C.I.J. 597 : 10 I.C. 491
Nanda Lal Mullick v. Kumar Arun Chandra Sinha, 41 C.W.N. 464.

Married women :—Where lands had been devised to A for life with remainder to a husband and wife, their heirs and assigns, for ever, the wife was in the position of a woman seised in her own right. The trustee of a married woman absolutely entitled to her separate use cannot sell and make a title to bind *cestui que trust*, and there is no distinction between her position and that of a man, (g).

Tenants-in-tail or for life :—Estates inalienable settled by Act of Parliament could be purchased or taken by the promoters, and that the tenant for life could bar his heirs in tail and all remaindermen, except the Crown, which is not bound by any Act of Parliament without being named. An equitable tenant for life may contract for the sale of lands but the trustees in whom the legal estate is vested are necessary parties to the conveyance. A tenant for life by selling under the provisions of the Lands Clauses Act becomes entitled to have the costs of re-investment paid by the promoters, (h).

Guardians of Minors :—The guardian of a minor's estate has no power to waive a right to compensation for part of the estate taken under L. A. Act, although the owner, had he been of full age, might have waived it, (i).

Court of Wards :—Although the Court of Wards had no power to alienate the land of a minor of whose estate it had charge, yet possession might have been lawfully taken of the land for a public purpose, under and in conformity with the L. A. Act, if there had been due compliance with the provisions of the Act, as regards compensation to the minor's estate. Where, however, compensation had not been given, and a merely nominal compensation had passed, the Collector, not having acted as representative of the Court of Wards, so as to protect the interest of the minor, it was held, that no valid title to the land was established as against the ward and that on his attaining full age, he would receive it with mesne profit, (i).

Committee of lunatics or idiots :—Section 7 (Lands Clauses Act, 1845), does not empower committees of lunatics and idiots to enter into an agreement to sell lands of the lunatics or idiots without the consent of the Lord Chancellor, *Re-Taylor* (j). : but section 120 (a) of the Lunacy act, 1890, empowers the Judge in lunacy by order to authorize the committee of lunatic's estate to sell any property of the lunatic.

Besides the persons enumerated above who are "competent to Act", section 7 of the Lands Clauses Act, 1845, mentions others who are also competent to act, viz., Corporations, receivers, etc.

Corporations :—Though the company had no power to sell lands upon which their water-pipes were laid yet if a special Act authorized the compulsory taking of any of the company's lands for the purpose of another undertaking, the purchase money may be paid to the company as absolute owners, (k).

(g) *Cooper. v. Gostling* (1863) 9 L.T. 77 ; *Peters v. Lewis* (1881) 18 Ch. D. 429.

(h) *Cuckfield Burial Board, Ex parte Earl of Abergavenny* (1855), 19 Bev. 153 : 24 L.I. (Ch.) 585.

(i) *Luchmeswar Singh v. Chairman of the Darbhanga Municipality*, 17 I.A. 90 : 18 Cal. 99 (P. C.).

(j) *Re : Taylor*, (1849) 6 Ry. Case, 741.

(k) *Re. Chelsea Waterworks Co.* (1889) 56 I.T. 471.

Receivers :—In *Tink v. Rundle*, (1) it was held that the company before proceeding under s. 81 of the Lands Clauses Act (1845) to enter on lands in possession of a receiver appointed by the Court of Chancery must get leave of the Court. "The receiver has power to alienate the property".

Proviso (1)

Persons not entitled to act :—The proviso bars persons with adverse interest from being entitled to act. Collector who had control over a minor's land acquired the land on a nominal award. Such acquisition is not binding, (i) *ibid*.

The Municipality of Poona wishing to take up the applicant's land, the Collector of Poona determined the amount of compensation, and tendered it to the applicant, who declined to accept it. The Collector thereupon referred the matter to the District Judge. Two Assessors were appointed to aid him, one by the applicant and another by the Collector. The nominee of the Collector was the mamlatdar of Poona, a rate-payer and an ex-officio member of the Municipality, who, whilst a member of the managing committee, had unsuccessfully negotiated with the applicant for the purchase of the ground. The District Judge made an award upholding the Collector's valuation. It was held, that the award was bad and must be set aside as the Collector's nominee had, under the circumstances, real bias, and was not a qualified assessor within the meaning of section 19 of the L. A. Act X of 1870, (m).

Proviso (IV)

This proviso makes it clear that the expression 'entitled to act' is not to be confused with persons 'competent to alienate'. Unless a person is competent to alienate, he is not entitled to act. A tenant for life, guardian, trustee, executor or administrator, holder of an impartible estate, the owner of an unenfranchised *service inam*, a shebait etc., are persons not ordinarily entitled to alienate and so not ordinarily entitled to act. But they may be so authorised by Court or by Rules framed by appropriate Government, as is done by State of West Bengal by framing Rules after amending Sec. 32 by adding a section 32A and framing Rules thereunder. (see notes under s. 31, 32 etc.). There is a distinction between the position of a collector under Part II of the Act and his position under Part III. In the former, he acts practically as the agent of the Government of fixing the price to be paid and in taking possession of the land which is acquired. His award is not binding on the owner as he can ask for a reference under section 18 ; nor is the Government bound till possession is taken as it can under section 48 withdraw from the acquisition till then. It was with reference to these circumstances that his action was held to be an administrative one by the Privy Council, (n).

(1) *Tink v. Rundle*, (1849) 13 Bev. 318. *Adhar Kumar Mitra v. Sri Sri Radha Madan Mohan Jiu*, 36 C.W.N. 370 : 139 I.C. 180 : 1933 A.I.R. (Cal.) 660.

(m) *Kashinath Khasgivala v. The Collector of Poona*, 8 Bom. 553 ; *Swamirao v The Collector of Dharwar*, 17 Bom. 300.

(n) *Parameswar Iyer v. L. A. Collector, Palghat*, 42 Mad, 231.

PART II

ACQUISITION

Preliminary Investigation

Publication of preliminary notification and powers of officers thereupon

4. (1) Whenever it appears to the ¹[appropriate Government] that land in any locality ²[is needed or] is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

To enter upon and survey and take levels of any land in such locality ;

to dig or bore into the sub-soil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches ; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle ;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

¹ These words were substituted for the words "Local Government" by the Government of India (Adaptation of India Laws) Order, 1937 and 1950.

² These words were inserted by s. 2 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

State Amendments

1. *Bihar*—By Bihar Act XI of 1961, Sec. 4.
[See under Part III, Chapter III, Bihar (1)].
2. *Bihar (Patna City)*—By Bihar Act XXXV of 1951, S. 71 and Schedules and Para 2(1).
[See under Part III, Chapter III, Bihar (7)].
3. *Guzarat*—By the Land Acquisition (Gujarat Unification and Amendment) Act 20 of 1966.
[See under Part III, Chapter IV-B, Gujarat (2)].
4. *Jubbulpore*—By City of Jubbulpur Corporation Act, 1948.
[See under Part III, Chapter IX, M. P. (10)].
5. *Madhya Pradesh*—By the Land Acquisition (Madhya Pradesh Amendment and Validation of Acquisition of Lands) Act 11 of 1967.
[See under Part III, Chapter VIII, M. P. (1)].
6. *Madras*—By Madras Act XXXVII of 1950. S. 7 and Schedule, Para 2(1).
[See under Part III, Chapter IX, Madras (1)].
7. *Maharashtra*—By Bombay Act, VIII of 1958, Notification dated 5-9-1958.
“In its application to the whole of the State of Maharashtra excluding the transferred territories in section 4(1) in Sub-Section (1), after the words “Appropriate Government” insert the words “or the Commissioner” and (2) in sub-section (2) after the words ‘such Government’ insert the words “or as the case may be, by the Commissioner”.
8. *Nagpore City*—By Nagpur Improvement Trust Act XXXVI of 1936 (C. P.).
[See under Part III, Chapter VIII, Madh. Pra. (4)].
9. *Punjab*—By Punjab Act IV of 1922, S. 59 and Schedule, Cl. 2(1).
[See under Part III, Chapter XII, Punjab (4)].
10. *Uttar Pradesh*—By U. P. Act II of 1959 i.e., U. P. Nagar Mahapalika Adhiniyam 1959. S. 376 and Sch. II Para 2(1).
(Same as in Bihar and Punjab Acts).
11. *Uttar Pradesh*—By U. P. Act XXII of 1954 :—
 - (i) in sub-section (1), after the word “Government” add the words “or Collector” and
 - (ii) in sub-section (2) after the words “such Government” add the words “or Collector”.

Notes

Sec. 4 of the old Act X of 1870 was as follows :—

“4. Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local Gazette, and the Collector shall cause public notice of the substances of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf and for his servants and workmen, to enter upon and survey and take levels of any land in such locality ; to dig or bore into the subsoil ; to do all other acts necessary to ascertain whether the land is adapted for such purpose ; to set out the boundaries of the land proposed to be taken and the intended line, of the work (if any) proposed to be made thereon ; to mark such levels, boundaries and line by placing marks and cutting trenches ; and, where otherwise the survey can not be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed, court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Amendment

In sub-section (1) of section 4 after the word "locality", where it first occurs, the words "is needed or" have been inserted by sec. 2 of the Land Acquisition (Amendment) Act, XXXVIII of 1923.

As to amendments with which sections 4 and 5 should be read when land is required for the purposes of company, see s. 38(2), *infra*.

Effect of the amendment :—Taking the amended section 4 as it stood on January 1st, 1924, it could only apply to lands which appeared to the local Government to be needed for any public purpose *thereafter*. It could not possibly apply to lands which had appeared previously to the amendment to be needed or likely to be needed, so that the provisions of section 5A should apply, (a).

Preliminary investigation :—Sections 4 and 5 of the Act lay down certain rules under which a preliminary investigation may be made into the conditions and circumstances of the land which the local Government may consider likely to be needed for a public purpose or for a company. These sections do not always come into operation, and are only required when a preliminary survey is necessary or in cases in which uncertainty may exist as to the position of the land to be taken up or as to its suitability for the purpose for which it is required, e. g., when operations on a large scale are in contemplation and it is necessary to determine the line of a railway, road, canal or other important work. *Board's Instructions II ; See Bengal L. A. Manual, 1910, p. 53.* It is incumbent on the officer whose duty it is to select land for public purposes to endeavour to avoid buildings etc., the acquisition of which will entail unnecessary expenditure on Government or annoyance to owners if the object sought can be equally well attained by slight alteration of the alignment of site chosen, or in some other manner. If the land applied

for contains religious buildings or tombs, the fact must be specifically noted in the application. *Board's instructions*, 8 ; *See Bengal L. A. Manual*, 1910, p. 52.

Notification :—A notification under section 4 of the Act must in all cases be followed by a declaration under section 6 as soon as it has been decided to proceed with the acquisition and the position and boundaries of the land to be acquired have been fixed and determined. *Board's Instructions II ; See Bengal L. A. Manual*, 1910, p. 53. Before inquiries can be made under section 4, a notification must be published by the Government in the local gazette stating that land is likely to be acquired and public notice of the notification must be given by the Collector. The result of issuing such a notice was that, under sub-section (2), it would be lawful for any officer, either generally or specially authorised by the Government on their behalf and for his servants and workmen, to enter upon the survey and take levels of the land and any land in such locality, (a). A public purpose can be invoked for purposes of the Union or of a State or for any other general public purposes, (b).

Notification a stage of enquiry :—The words "it appears" clearly show that opinion is not finally made. When a notification only is issued under s. 4 of the Act the proceedings are at the stage of an enquiry under s. 5A as to whether the lands are required by a company for purposes mentioned in s. 40 and the Court will not be at that stage in a position to judge whether such acquisition could be justifiable or not. It is not absolutely necessary for the validity of the land acquisition proceedings that the statement 'public purpose' should find a place in the notification actually issued and hence such a defect is not fatal to the validity of the proceedings under s. 4, (c). But if the land is acquired for a company, it must be expressly stated, (d). The Collector is bound to cause public notice of the substance of such notification to be given at convenient places in the locality, (d-1).

Effect of notice under s. 4 :—In accordance with the Privy Council decision in *Atmaram v. Collector of Nagpur* (e), an owner of land is entitled to the value of the property at the time of expropriation and that expropriation takes place at the date of notification under s. 4., (e-1). Notification under s. 4(1) is the *sine qua non* of process of acquisition and must be strictly construed. A notification not specifying the locality where lands were needed does not comply with essential requirement and the defect cannot be cured by giving particulars in later notification under s. 6(1) ; (f).

Apart from the fact that in India an agreement for sale by itself creates no interest, it is clear that no interest in favour of Government arises from

(b) *State of Bombay v. Gulsan Ali*, A.I.R. 1955 S.C. 810.

(c) *Babu Barkya Thakur v. State of Bombay* (now Maharashtra) (1962) (II) S.C.A. 425, A.I.R. 1960 S.C. 1203 ; (1961) I.S.C.R. 128 ; (1961) 2 S.C.J. 392.

(d) *Shyam Behari v. State of Madh. Pra.*, A.I.R. 1965 S.C. 427.

(d-1) *Gunwant Kaur v. Municipal Committee, Bhatinda*, A.I.R. 1970 S.C. 802.

(e) *Atmaram v. Collector of Nagpur*, A.I.R. 1929 P.C. 92.

(e-1) *Narendrajit Singh & Ors. v. The State of U. P. & Ors.* A.I.R. 1971 S.C. 306.

(f) *Province of Sind v. Harkrishindas Gulabrai*, I.L.R. 1940 Kær. 396 ; A.I.R. 1940 Sind 58.

the notification under s. 4, The identity of the property acquired is determined only in the declaration under s. 6 being made. If by flood or otherwise an appreciable part of the land notified under s. 4, was swept away before the declaration under s. 6, but it is considered necessary to proceed with the acquisition of the remainder, the description of the property in the notification might be the same or in similar terms. But Government would not be bound by any statement of area contained in the first notification, but would have to pay only for such property as was declared to be required by the notification under s. 6. Although the date of notification under s. 4 is the date at which values are to be considered, the identity of the property is determined by notification under s. 6. If in the period between the two notifications a part of the property has ceased to exist, whether by act of the owner or by accident, the value of that part has not to be taken into consideration when making the award. The L. A. Act postulates a public purpose, as to the existence of which Government is the judge. The Act nowhere postulates identity in the scheme by means of which the public object is to be carried out. All that is legally necessary is that the lands which it is intended to acquire for a public purpose should be notified first under s. 4 and then under s. 6 of the Act. When that has been done the requirements of the Act are satisfied. When the object of the scheme for which the acquisition is made is unchanged, the fact that there has been change in the method of the carrying out the scheme and financing it would not make it a new scheme, so as to necessitate a fresh notification under s. 4 (g).

In case of contiguous lands belonging to a single owner and capable of severance by nature, there was one notification in respect of one land and another in respect of another land, if one notification is bad the other need not be struck down for that reason (h).

Owner's right ceases :—Another and more important effect is that the owner ceases to have any right to deal with the property in any way without the sanction of the Collector and if he does, he is not entitled to any compensation for the same. Sec. 24(7) provides that the Court shall not take into consideration "any outlay or improvement on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under Sec. 4, sub-sec. (1)".

Proceedings by "appropriate Government" :—Proceedings under the section can be started only by the appropriate Government and not by an officer of the Government, (i). It can be started provided the Government concerned is 'satisfied' that the land is needed for a public purpose. It is primarily the satisfaction of the Government that counts (j). For acquisition

(g) *Parshottam v. Secretary of State*, 39 Bom. L.R. 1257 : 174, I.C. 67 : 1938, A.I.R. (B) 148.

(h) *Mohammad Habibulla v. Special Dy. Collector, Madras*, A.I.R. 1967 Mad. 18.

(i) *Sri Bhagat Singh v. State of Patiala*, A.I.R. 1954 Patiala 174.

(j) *Saniuddin v. Sub-Divisional Officer*, A.I.R. 1954 Assam 81 : *Brijnath v. U. P. Government*, A.I.R. 1953 A. 182.

of land for Union purposes the appropriate Government to issue notification, is the Central Government. A notification issued by State Government is invalid in the absence of valid delegation by Central Government in the name of the President under Art. 258(1) of the Constitution (k). Such delegation has been made and orders passed and proceedings held in connection therewith by State Governments before such delegation was made, have been validated by the State Acquisition of Lands for Union Purposes (Validation) Act XXIII of 1954, (l).

Notification under S. 4 when exhausted :—On issue of a notification under s. 6, notification under s. 4 is exhausted and cannot thereafter support any subsequent notification under s. 6. There is thus no notification under s. 4 to support the second notification under s. 6. (l-1).

Notification under S. 4(1) & S. 6 (1) :—Where Government takes a decision so as to dispense with compliance with s. 5A in case of emergency under s. 17, law does not make the prior publication of notification under sub-section (1) of s. 4 a condition precedent to the publication of a notification under sub-section (1) of s. 6, (m). It was further held that declaration as to public purpose by the Government is final except where it is colourable exercise of power, notwithstanding *Hemabai's* case (n) which was distinguished.

Notification under S. 4(1) & S. 17(4) :—A simultaneous publication of notification under sections 4 and 17(4) of the Act is not illegal, (o).

Whether notification for a particular body enures for the benefit of any other body :—Notification under this section need not mention for whose benefit the acquisition is made, the purpose need only be 'public purpose' no matter whether of any one company or of any other company. Therefore a notification of land for a particular company can enure for the benefit of succeeding body (p). But all public purposes shall have to be declared. There can not be any acquisition for an undeclared or subsequently added public purpose, (q).

While it is necessary that the declaration must contain a mention of public purpose, yet it is not necessary that it should also give its particulars.

Absence of notification when not fatal :—If in a special or local law there is no provision similar to that of sections 4 or 5A, then non-compliance with s. 4 or s. 5A will not be fatal, (r).

No condition precedent for notification under S. 4 :—In issuing a notification under s. 4 of the Act the appropriate Government is not prevented,

(k) *Balak v. State of U. P.*, A.I.R. 1962 All. 208 : I.L.R. (1961), 2 All. 653.

(l) *Tinsukia Development Corporation Ltd. v. State of Assam*, A.I.R. 1961 Assam 133 (F. B.).

(l-1) *Doongarsee & Sons. v. State of Gujarat*, A.I.R. 1971 Guj. 46 (D. B.).

(m) *Somawanti v. State of Punjab*, A.I.R. 1963 S.C. 151 :

(n) *Hemabai Framji Pitt. v. Secretary of State*, 39 Bom. 279 (P.C.) : A.I.R. 1914 P. C. 20 ; *Smith v. East Ellora*, 1956 A. C. 736 not followed.

(o) *Synthesis Chemicals Ltd., v. Ram Asrey Lal*. A.I.R. 1967 All. 4.

(p) *Budhi v. State of Punjab*, A.I.R. 1964 Punj. 300.

(q) *Gadadhar Ghosh v. State of West Bengal*, 67 C.W.N. 460.

(r) *Mohammad Noohoo v. State of Travancore*, A.I.R. 1952 Tr. Co. 522,

merely because a Municipality has not attempted to acquire the land by private treaty. There is no condition precedent to the acquisition of land which is to be complied with before a notification under s. 4 of the Act is issued, (s). It will be sufficient if it is founded on investigation as to the satisfaction of the appropriate Government that the land was needed for a public purpose (r). The notification should give an indication of the public purpose (u). Where educational facilities for large number of women students are intended to be extended by further acquisition, the purpose was a public purpose (v). Acquisition for accommodating Government servants is a public purpose (w). Acquisition of land for Mahakosal Housing Board under M. P. Housing Board Act 43 of 1950 was held to be quite valid (x).

No suit lies to restrain acquisition after notification under S. 4 :—When the Government issued a notification under section 4 of the Act, of its intention to acquire land for the purpose of providing house sites for panchamas and other people, advancing 80 per cent of the price to them to be recovered in instalments in a period of 20 years and a suit was filed against the Government to restrain it from acquiring the land on the ground that the acquisition was illegal, it was held (1) that the purpose of the acquisition was a public purpose within the meaning of section 4 of the L. A. Act even though only a section of the public was benefitted by the acquisition and the intention of the Government was to allot particular sites to particular individuals ; (2) that the suit was premature in so far as it questions the propriety of the Government's action on the ground that it offended against the proviso to section 6 (1) of the L. A. Act ; (3) that the arrangement as regards the recovery of the price did not contravene the condition required by the said proviso that no declaration could be made unless the compensation to be awarded was to be paid wholly or partly out of public revenues (y).

Sec. 5-A absolutely debars a Civil Court from questioning the propriety of a notification under S. 4. The objector has to go to the Provincial Government and the finding of that Government on his objection is conclusive. A declaration in the notification under s. 4 that the land had been resumed by the Government of India and that the superstructure only was being acquired, does not mean that the land was resumed by the notification, for resumption is absolutely foreign to the scheme of the L. A. Act. Consequently, no suit lies to declare a notification under s. 4 invalid merely because it relates to a *fait accompli* antecedent in time to the notification, namely the resumption of land by the Government (z).

(s) *Ambalal Parshottam v. Ahmedabad Municipal Corpn.*, A.I.R. 1968, S.C. 1223.

(r) *M. P. Kutappa Kurup v. Sub-Collector*, A.I.R. 1962 Ker. 252.

(u) *Shyam Behary v. State of Madh. Pradesh*, A.I.R. 1965, S.C. 427 : 1965 (1) S.C.A. 588.

(v) *Amarendra v. State of West Bengal*, 67 C.W.N. 647.

(w) *Ouseph Marthe v. State of Kerala*, I. L. R. 1960 Ker. 464.

(x) *Anand Kumar v. State of M. P.* A.I.R. 1963 M. P. 256.

(y) *Secretary of State v. Gopala Aiyer*, 59 M.L.J. 274 ; 1930 A.I.R., Mad. 798.

(z) *Basheshor Nath v. Provincial Government*, 266 I.C. 188 : 1943, A.I.R. (Pesh.) 27.

Notification on re-organisation of States :—No fresh notification under s. 4(1) is necessary, if the Act under which the lands are acquired, continues to be in force in the new State on re-organisation, (a).

Successive notifications and High Court's jurisdiction under Art. 227 :—Successive notifications were issued in 1955, 1956 and 1958 under s. 4(1) of this Act. The District Court awarded compensation at the market value prevailing in 1956 and 1958. The High Court set aside the order directing retrial holding that there was no absolute rule that in this sort of cases compensation must be determined on the basis of market value prevailing on the date of last notification, in an application under Art. 227 of the Constitution. Held by the Supreme Court in *Bhutnath Chatterjee v. State of West Bengal* (b), that jurisdiction of High Court does not extend to correct the finding of the District Court on the matter of compensation.

Rules :—Rules by the Board of Revenue in furtherance of the Act, and in order to better enable the officers of the Government to carry out the requirements of the law are not *ultra vires*, (c).

Payment for damages

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

State Amendments

1. *Mysore.—The Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961.*

"8. In section 5 of the principal Act for the words "so authorised" the words, brackets and figures "authorised under sub-section (2) or sub-section (3) of section 4" shall be substituted.

(See under Part III, Chapter X, Mysore).

Notes

Section 5 of the old Act X of 1870 ran as follows :—

"The officer so authorised shall, at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid; and in case of dispute as to the sufficiency of the amount to be paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final."

(a) *Kanayalal v. State of Gujarat*, A.I.R. 1970 N.S.C. 1.

(b) *Bhutnath Chatterjee v. State of West Bengal*, A.I.R. 1959 N.S.C. 73,

(c) *Ezra v. Secretary of State*, 30 Cal. 36 : 7 C.W.N. 249.

Changes :—The only change is in the word 'officers' substituted in place of word 'officer' and the addition of words 'or other chief revenue officer' after the word "Collector" in the 5th line.

Obstruction to entry :—The owner or occupier of any land, which has been notified under section 4 as likely to be acquired for a public purpose and to whom at least 7 days' notice was given regarding the intended entry of the Collector or his staff for the purpose stated in sec. 4, has no right whatsoever to obstruct the Collector or his men from entering into the land and completing their enquiries. If, however, any resistance were made to enquiries of this nature, then the person obstructing the officer authorised by Government, would render himself liable to punishment under Sec. 46 of this Act.

Compensation for damage :—Any damage caused during the enquiry must be paid for. The decision of the Collector of the district as to the amount of such damages is final and any dispute must be referred to him. His enquiry is a summary one and he has no power to take evidence on oath. *Peterson, p. 3.*

Investigation as to damage :—The investigation to be made by the Collector in cases referred to him under section 5 is a summary one. The law gives him no power to take evidence on oath in conducting it. He may order a local enquiry which he is at liberty to make either in person or by a Deputy or Sub-Deputy Collector. The responsibility for the amount of any award for damages under Sec. 5 will, however, in all cases rest with the Collector. *Board's Instruction, 12(2), Bengal L. A. Manual 1910, p. 53.* The decision of the Collector as to damages being final, no suit lies for ascertaining the same in a civil Court.

Objections

Hearing of objections

15A. (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, ² [either make a report in respect of the land which

¹ This section with its heading was inserted by s. 3 of the Land Acquisition Amendment) Act, 1923 (38 of 1923).

² These words were substituted by The Land Acquisition (Amendment and Validation) Act No. 13 of 1967, dated 12-4-67.

has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.]

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

State Amendments

1. **Bihar.**—By *Bihar Act XI of 1961, Sec. 5*.
[See under Part III Chapter III, Bihar (1)].
2. **Guzarat**—(same as that of Maharashtra, See below).
3. **Madras (City).**—By *Madras Act XXXVII of 1950, S. 73 and Schedule, Para 2(2)*.
[See under Part III, Chapter IX, Madras (1)].
4. **Maharashtra.**—By *Bombay Act VIII of 1958. S. 3(4), Notification dated. 5-9-1958.*

“In its applications to the State of Maharashtra excluding the transferred territories, in sub-sec. (2) of section 5-A, after the words ‘appropriate Government’ where they occur at two places insert the words ‘or, as the case may be, the Commissioner’.

5. **Mysore.**—By *Mysore Act 17 of 1961*.
(See under Part III, Chapter X, Mysore).
6. **Patna City.**—By *Bihar Act XXXV of 1951*.
[See under Part III, Chapter III, Bihar (7)].
- Uttar Pradesh** By *U. P. Act XXII of 1954*.

In sub-section (1) of section 5A, for the words “thirty days”, substitute the words “twenty one days”.

Notes

Defect in Act I of 1890 :—This section has been added by Act XXXVIII of 1923. It was held in *Ezra v. Secretary of State* (d), that in making an acquisition of land, the wishes of the owners of the land were wholly irrelevant under the Act. It did not contain any provision for any objection on the part of the owner to the acquisition itself. All his objections were limited to the amount of compensation and matters connected therewith, such as measurements and area. Though there is no such provision in the English Lands Clauses Consolidation Act, 1845 (8 & 9 Viet. Ch. XVIII) and the subsequent amendments, such provision is found in sec. 35 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Viet. Ch. XX).

Amendment Act XXXVIII of 1923 :—To remedy the above defect in Act I of 1894 and to bring it in line with the English Act, a Bill,

being No. 29 of 1923 was introduced on the 11th July 1923. The Statement of Objects and Reasons for the said Bill is as follows: "The Land Acquisition Act I of 1894 does not provide that persons having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisitions; nor is Government bound to enquire into and consider any objections that may reach them. The object of this Bill is to provide that a Local Government shall not declare, under section 6 of the Act, that any land is needed for a public purpose unless time has been allowed after the notification under section 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government", (*Gazette of India, Pt. V. dated 14th July 1923, page 260*). The Bill having been passed into law as Act XXXVIII of 1923 with added section 5A to the Act and having received the assent of the Governor-General on the 5th August, 1923 came in force since 1st January, 1924 (*Gazette of India, dated 8th December, 1923, Part 1, p. 1684*).

Effect of the Amendment by Act 38 of 1923 :—The result of the addition of this section is that the wishes of the owner are no longer irrelevant. The Collector must in his report discuss the objections and give his reasons for overruling them in cases of different opinion. Moreover the decisions of Government under the circumstances cannot be an *ex parte* decision as was the case before. The section provides, (a) that any person who would be entitled to claim an interest in the compensation, if the land was acquired, may, object; (b) the objection must be made in writing; (c) it must be made within 30 days after the issue of the notification under section 4; (d) the objection must be made to the Collector which by s. 3(c) means the Collector of the District and includes a Deputy Commissioner and any officer specially appointed by the Government to perform the function of a Collector under this Act; (e) it is the duty of the Collector to give the objector an opportunity of being heard either in person or by pleader; (f) the Collector may or may not make any enquiries but he must hear all objections before submitting the case for the decision of the Local Government with a report of his recommendations. It should be noted that it is only the person interested in any land which has been notified under section 4(1) of the Act that can object to the acquisition thereof. Where a person relies on his title to the land for the purpose either of claiming compensation for its acquisition or of challenging the right of Government to acquire under L. A. Act a part only of his total interest in the said land and buildings the burden lies upon him to prove his title (e).

Before the petitioner could take advantage of sub-sec. (2) of sn. 5A it was necessary for him to establish that the Government had actually recorded a decision on his objection either on the basis of the Collector's recommendation and report or otherwise and that the decision upheld the petitioner's objection (f).

(e) *Sohan Singh v. Governor-in-Council*, A.I.R. (1947) P. C. 178.

(f) *Sarju Prosad Sahu v. State of U.P.* 1962 A.L.J. 96 : A.I.R. 1962 All. 221.

Land Acquisition (Amendment and Validation) Act 13 of 1967

Object of the amendment :—The object of the Act is to overcome the adverse effect of the Supreme Court judgment dated 9th February, 1967 in *State of Madhya Pradesh v. Vishnu Prosad Sharma* (g).

In the statement of object and reasons published in India Gazette Extraordinary Pt. II, Sec. 1, No. 1 dated March 18, 1967, in introducing the Bill it has been stated as follows :

'In acquisition of land for big projects, the practice generally followed under the Land Acquisition Act 1894, is that a single notification is issued under section 4(1) of the Act which indicates that a particular area of land is needed or is likely to be needed for a public purpose. This is then followed by one or more declaration under section 6 of the Act in respect of the land specified in the aforesaid notification to the effect that such land is needed for a public purpose or for a company, as and when the plans are completed for the various stages of the project, e.g., plant, township and ancillary requirements.

In their judgment dated 9th February, 1967 in the case of the *State of Madhya Pradesh v. Vishnu Prosad Sharma & Ors.* (g), the Supreme Court held that once a declaration under section 6 of the Act is issued whether it be in respect of a part of the land comprised in the notification under section 4(1) or in respect of the whole of it, the effect of initial notification is exhausted and no further declaration under section 6 of the Act are sustainable. In other words, Government can not acquire land by means of successive declarations following the notification under section 4(1) in respect of the particular area. The Supreme Court has construed the acts done under sections 4, 5A and 6 of the Act as part and parcel of a single process. The above decision of the Supreme Court, however has the effect of upsetting a large number of proceedings for land acquisition for various public purposes throughout the country as, in most cases of bigger projects, acquisition has been done in stages consistent with the requirements of the situation and a single notification under section 4(1) has been followed with more than one declaration under section 6 of the Act. It was not possible to reopen all such cases and to start proceeding afresh as it would have seriously dislocated projects for which land had been acquired and compensation paid.

Consequently, to overcome the adverse effect of the Supreme Court judgment and in view of the urgency of the situation affecting many important projects, the Land Acquisition Act, 1894, was amended with retrospective effect by the promulgation of the Land Acquisition (Amendment and Validation) Ordinance, 1967 on the 20th January, 1967, to provide for submission of either one report in respect of the land which has been notified under section 4(1) or different reports in respect of different parcels of such land to the appropriate Government containing the recommendation of the Collector(s) on the objections submitted by the interested persons under

(g) *State of Madhya Pradesh v. Vishnu Prosad Sharma*, 1967 (1) S.C.A. 32 : 1966 (2) S.C.J. 231.

Section 5A (1) of the Act to the acquisition of the land covered by notification under section 4(1) or of any land in the locality, as the case may be. The Ordinance specifically provides that, if necessary, more than one declaration may be issued from time to time in respect of different parcels of any land covered by the same notification under section 4 sub-section (1) of the Act irrespective of the fact whether one report or different reports has or have been made under sec. 5A, sub-section (2) of the Act.

At the same time care has been taken to ensure that land acquisition proceedings do not linger on for unduly long time. The aforesaid Ordinance therefore provides that no declaration under section 6 of the Act should be issued in respect of any particular land covered by a notification under section 4(1) published after the commencement of the Ordinance, after the expiry of three years from the date of such publication. In case of pending proceedings it has been provided that no declaration under section 6 of the Act in respect of any land which has been notified before the commencement of the above Ordinance, under sub-section (1) of section 4 of the Act may be issued after the expiry of two years from the commencement of the Ordinance.

So the Ordinance was repealed and the Land Acquisition (Amendment and Validation) Act No. 13 of 1967 was passed. (*See notes under s. 6 where the Ordinance and the Act are re-produced*).

The sub-section (2) of Sn. 5A before the Amendment Act 13 of 1967 stood as follows :—“(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, submit the case for the decision of the Appropriate Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Appropriate Government on the objections shall be final.”

The Amendment Act 13 of 1967 provides for one report or different reports on different parcels of land followed by different declarations but covered by one notification under Sec. 4.

Retrospective effect of sub-section (2) under Act 13 of 1967 :—By sub-section (2) of section 5 of the Land Acquisition (Amendment and Validation) Act 13 of 1967 this sub-section is given retrospective effect from 20th January, 1967. But section 4 of the Amending Act 13 of 1967 provides that—

(1) Notwithstanding any judgment, decree or order of any court to the contrary—

(a) no acquisition of land made or purporting to have been made under the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967, and no action taken or thing done (including any order made, agreement entered into, or notification published) in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground—

(i) that one or more Collectors have performed the functions of Collector under the principal Act in respect of the land

- covered by the same notification under sub-section (1) of section 4 of the principal Act ;
- (ii) that one or more reports have been made under sub-section (2) of section 5A of the principal Act, whether in respect of the entire land, or different parcels thereof, covered by the same notification under sub-section (1) of section 4 of the principal Act ;
 - (iii) That one or more declarations have been made under section 6 of the principal Act in respect of different parts of the land covered by same notification under sub-section (1) of section 4 of the principal Act in pursuance of one or more reports under section 5A thereof ;
- (b) any acquisition in pursuance of any notification published under sub-section (1) of section 4 of the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967, may be made after such commencement and no such acquisition and no action taken or thing done (including any order made, agreement entered into or notification published), whether before or after such commencement, in connection with such acquisition, shall be deemed to be invalid merely on the grounds referred to in clause (a) or any of them.
- (2) Notwithstanding any thing contained in clause (b) of sub-section (1), no declaration under section 6 of the principal Act in respect of any land which has been notified before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, under sub-section (1) of section 4 of the principal Act, shall be made after the expiry of two years from the commencement of the said Ordinance.
- (3) Where acquisition of any particular land covered by a notification under sub-section (1) of section 4 of the principal Act, published before the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967 is or has been made in pursuance of any declaration under section 6 of the principal Act, whether made before or after such commencement, and such declaration is or has been made after the expiry of three years from the date of publication of such notification, there shall be paid simple interest calculated at the rate of six per cent per annum on the market value of such land as determined under section 23 of the principal Act from the date of expiry of the said period of three years to the date of tender or payment of compensation awarded by the Collector for the acquisition of such land ;

Provided that no such interest shall be payable for any period during which the proceedings for the acquisition of any land were held up on account of stay or injunction by order of Court ;

Provided further that nothing in this sub-section shall apply to the acquisition of any land where the amount of compensation has been paid to the persons interested before the commencement of this Act".

So it is clear that the sub-section (2) is given further retrospective effect even if judgment or decree is passed but no action taken in execution.

Sn. 5A and effect of Amendments by Act 13 of 1967 :—As has already been seen in the statement of objects that this amendment was effected 1stly to validate different declarations under s. 6 in relation to same notification under s. 4, 2ndly to legalise different declarations in respect of different parcels of land covered by the notification under s. 4 and 3rdly directing the Collector to submit this report in respect of one particular plot of land covered by notification under s. 4(1) or submit different reports for different parcels of land to the appropriate Government along with all records of the proceedings so that the Government may come to a decision on proper satisfaction. 4thly it is provided that after this amendment i. e., from 20-1-67, if there is a notification under s. 4(1) the declaration required under s. 6 must follow within a period of three years from the date of the publication of notice under s. 4(1). In other words the Government cannot keep the proceedings pending and all persons interested in the proceedings tied up for indefinite period and so provides a time limit of 3 years within which the Government must come to a final decision either to proceed with acquisition or to cancel or withdraw it. The absence of this provision was keenly felt for a long time.

A stage of enquiry :—When land is proposed to be acquired under the Land Acquisition Act 1894, for the purpose of a company, sec. 39 of the Act requires that the Government, before giving its consent to the acquisition, must be satisfied on the report of an enquiry under sec. 5A or on an enquiry under sec. 40 that the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen of the Company or for provision of amenities directly connected therewith or that such acquisition is needed for the construction of some work which is likely to prove useful to the public i.e., in effect for public purposes (h).

Cases in which this section does not apply :—In cases of urgency under s. 17 the Collector under the direction of the Local Government on the expiration of 15 days from the publication of the notice mentioned in section 9 may take possession without making the award, and also when owing to any change in the channel of a navigable river or other unforeseen emergency, it becomes necessary for any railway administration to acquire the immediate possession of any land for the maintenance of their traffic etc., the Collector may immediately after publication of notice and with the previous sanction of the Local Government enter upon and take possession of such land. In such cases the Local Government reserves to itself the discretion to suspend the operation of sec. 5A. *Vide, sec. 17(4), post.*

This section has no application also when temporary occupation of land is under sections 35, 36 and 37 of the Act or when the acquisition concerns a part only of a house, manufactory or other building or in case of an acquisition under a Special or Local Act enacted before coming into force of the Land Acquisition (Amendment) Act 1923, containing a special provision inducting Land Acquisition Act then in force (i).

(h) *Babu Barkya Thakur v. State of Bombay*, 1962 (II) S.C.A. 425.

(i) *Secretary of State v. Hindusthan Co-operative Insurance Co.* 59 Cal. 55 (P.C.); 35 C.W.N. 794 (P.C.) (*Vide notes in Sn. 49*), and *Collector of Kamrup v. Kamakhya Ram Barooah* (1965), S.C.R. 265.

If the Government makes a direction only under sec. 17(1), the procedure under sec. 5A would still have to be followed before a notification under sec. 6 is issued. It is only when the Government also makes a declaration under sec. 17(4) that it becomes unnecessary to take action under sec. 5A and make a report thereunder. Right to file objections, is a fundamental right, and that an order under s. 17(1) or 17(4) can only be passed in case of waste or arable lands (j).

The notification declaring that s. 5-A, shall not apply to the acquisition in case of land not being waste or arable, was declared invalid as also the declaration under s. 6, (k).

Non-compliance with S. 5A when fatal and absence of notification under Sn. 4 :—If in a special or local law there is no provision similar to that of s. 5A of this Act, then non-compliance with s. 5A will not be fatal to the proceedings for acquisition. In the Travancore Land Acquisition Act there is no provision like that of s. 5A of the L. A. Act 1894, and possession was taken of a plot of land under the emergency provision of s. 17 of the Local Act which is similar to the Act 1 of 1894. It was held that non-compliance with s. 5A will not be fatal and that because of absence of s. 5A, absence of a notification under s. 4 will also not be fatal. It has already been stated that when s. 17 is applied, a notification under s. 5A may be dispensed with, (l). But otherwise in all other cases excepting as stated above, non-compliance with s. 4 and s. 5A will be fatal.

Objection :—Sub-section (2) contemplates that the objection should be made to the Collector in writing and who must give the objector an opportunity of being heard and that the Collector must hear the objection. Thereafter he must submit his report with recommendations to the Government. If these are done, it can not be said that the mandatory provisions of the sub-section have not been complied with, (m). If the Land Acquisition officer has no jurisdiction, the mere fact that the objector has submitted his objection does not amount to his submission to jurisdiction and validate the proceedings, (n). The powers to be exercised under sec. 5A and 6(1) are quasi-judicial, though the land acquisition proceedings are of an administrative nature. If the authorities do not apply their minds according to s. 5A a writ of *certiorari* may be issued to correct the error or illegality although the objector may have other remedies open to him so that no final decisions are taken without hearing the objector (o). So far as the procedures are concerned they are almost similar in different states and are covered by—Statutory Rules or Manuals of different States viz., In Assam, Statutory Rules Nos. 1, 2, 3 and Assam Land Acquisition Manual 1933, pp. 65, 66. In Bengal, Land Acquisition Manual 1917 as amended up to date, pp. 51-53, and paragraph 12. In Bihar and Orissa, the Bihar and

(j) *Nandeshwar Prasad v. U. P. Government*, A.I.R. 1964 S.C. 1217 ; (1963) 3 S.C.R. 425.

(k) *Sarjoo Prasad Sahu v. The State of U. P.*, A.I.R. 1965 S.C. 1763.

(l) *Mohammad Noohu v. The State of Travancore*, A.I.R. 1952 Tr. Co. 522.

(m) *Samiuddin v. Sub-Divisional Officer*, A.I.R. 1954. Ass. 81.

(n) *Syed Dilever Hussain v. Collector of Madras*, A.I.R. 1955. Mad. 610.

(o) *Rama Govind Singh Bhola Singh v. Chief Commissioner*, A.I.R. 1951 V.P. 3.

Orissa Land Acquisition Manual 1928 p. 64. In Madras, the Madras Acquisition Manual 1928, p. 39. In Punjab, the Financial Commissioners' Standing Order No. 28 para 19A, etc.

So far as the objections are concerned the decision of the Government is final and the High Court ordinarily can not interfere where the recommendations of the Collector and the objection were duly considered (n). Even the Government can not cancel its decision once given nor can it make a declaration after allowing objection which amounts to altering the decision already taken and which is final (p). But withdrawal of an earlier notification under s. 48(1) does not amount to a decision that the land is not required for a public purpose (q). "Where the procedure prescribed by the Act has been followed, it is not open to Court to go behind the satisfaction of the Government. The enquiry envisaged under s. 5A of the Land Acquisition Act need not assume the procedural formality of a judicial enquiry. Suffice it for the enquiry if the objector be given a personal hearing or his pleader be heard and the objections are considered before making the statutory report" (r). But the decision of the Government must be a *bona fide* one and not colourable and *mala fide*, because right to the objection is a fundamental right, (s).

Who can object :—Any person interested in any land notified u. s. 4(1) may object to the acquisition of the land or of any land in the locality. Sub-section (3) lays down that a person shall be deemed to be interested in land, if he would be entitled to claim an interest in compensation.

All persons residing in locality can object :—The right conferred under sub-sn. (1) of s. 5A of the Land Acquisition Act is not only on the landowner but on all persons residing in the locality to object to the proposed public purpose being brought within locality, (t).

Dropping an enquiry :—It has been held that under s. 17(4) the Government can not issue a direction dropping the enquiry in all cases of urgent acquisition excepting, where the lands are arable or waste lands. The Government has to form an opinion as a condition precedent of issuing a notification under sub-sn. (4) of Sn. 17 for dropping the enquiry under s. 5A both as to the urgency as well as to the nature and condition of the land. The correctness of the opinion formed can not raise a justiciable issue. When the notification does not indicate that the necessary opinion was formed by the Government, the direction issued in the notification for dropping the enquiry under s. 5A was not in accordance with law, (u).

Application need not be in writing or personally signed :—Sn. 5A of the Act specially provides that the Collector must give the objector an opportunity of being heard either in person or by a pleader. Unless required

(p) *Mawasi v. State of U. P.*, A.I.R. 1943 A. 495.

(q) *Brij Nath Sarin v. U. P. Government*, A.I.R. 1965 A. 182.

(r) *Tirthalal De v. State of West Bengal*, 66 C.W.N. 115.

(s) *Nandeshwar v. U. P. Government*, A.I.R. 1964, S.C. 1217 and *Valjibhai v. State of Bombay*, (1963) 3 S.C.R. 686.

(t) *Laxmibai Radhakissen v. State of Bombay*, 1960 N.L.J. (Notes) 5.

(u) *(Shri) Navnitlal Ranchhodlal v. State of Bombay*, 62 Bom. L.R. 622 ; A.I.R. 1961 Bom. 89.

by the Collector even the basic statement of the claimant as to his interest, claims and objections need not be in writing signed by him or his agent. At all stages of the enquiry by the Collector and also at the time of making of the award, the claimant is entitled to appear personally or by his agent. Personal signature of the claimant on the statements and applications filed before the collector on his behalf, is not required and an agent's signature will be sufficient (v). This holds good also for applications for reference under s. 18(1) of the Act. The proceedings before the Collector is administrative and not judicial and the application before the Collector is not an application in a judicial proceeding, it is a mere request.

Notice for giving reasonable opportunity of being heard :—Sub-sn. (2) provides that the Collector must give the objector a reasonable opportunity of being heard. It follows therefore that notice fixing date of hearing must be served on the objector and that it must give him reasonable time to appear in person or by pleader. It is now a sound proposition of law that a notice giving an unreasonably short time to the objector for protection of his interest, would not be a service according to law. If a notice suffers from the defect of unreasonable shortness of time, the proceedings will be quashed by writ petition (w).

Section 5A and Sn. 40 :—Sn. 5A provides for an enquiry by Collector as to whether any land is needed for public purpose or for a Company and it also provides that such enquiry is to be conducted by issuing a notification under sn. 4(1) of the Act and that within 30 days of such notification any person may object and that all reasonable opportunities for hearing the objections must be given and that thereafter the Collector is to submit his report containing his recommendations on the objections.

Sn. 40 provides that a consent of the appropriate Government shall not be given unless the said Government is satisfied on the report of the Collector submitted under sn. 5A(2) or by a further enquiry etc. There is no provision for further fresh report of Collector under s. 5A for further enquiry and accordingly "in an enquiry under s. 40 persons whose plots of lands are acquired are not necessarily to be heard. That enquiry is held for the satisfaction of the State Government before giving its consent under the said Act. The State Government may arrive at that satisfaction even on consideration of the report under s. 5A, without a separate enquiry. If the State Government at all enquires further, it need not do so by hearing the persons whose lands are sought to be acquired" (x).

This is clear that first enquiry on which consent is to be given under s. 40 can not be initiated without complying with s. 5A. It is only in case of further fresh enquiry when no notice or opportunity for objection be given to persons interested. This second or further enquiry cannot be initiated without making the first enquiry in compliance with s. 5A.

(v) *Hrishi Kesh Mitter v. The State of West Bengal*, 69 C.W.N. 287 : *The Commissioner of Agricultural Income-tax, W. B., v. Keshab Chandra Mondal*, (1950), S.C.J. 364 ; *Umed Singh v. Subhag Mal*, 43 I.A. 1 : 20 C.W.N. 137.

(w) *Kiron Devi v. Commr. of I. T., W. B.*, 70 C.W.N. 141.

(x) *Abdul Kader Laskar v. State of W. B.*, 69 C.W.N. 1073,

Central Provinces and Berar Resettlement and Rehabilitation of Displaced Persons (Land Acquisition) Act 20 of 1949 :—Act No. 20 of 1949 is designed to confer authority on the State Government to acquire land for the resettlement and rehabilitation of displaced persons and in doing so provided that the provisions of the Land Acquisition Act, 1894, as modified by the Act are to be applied. There is no amendment of the Land Acquisition Act. What the Act No. 20 of 1949 provides is that for the purposes of the land acquisition under that Act the Central Act is to be read in a particular manner. The operation of s. 5A cannot therefore be excluded in respect of land reserved for Abadi or in respect of land under water to be acquired for industrial area. Notification under s. 4 excluding operation of s. 5A in case of part of land sought to be acquired being not waste or arable land, only that part of notification under s. 4 which excludes operation of s. 5A is liable to be quashed. Whole notification under s. 4 need not be quashed (y).

Declaration of intended Acquisition

6. Declaration that land is required for a public purpose.—

(1) Subject to the provisions of Part VII of this Act, ¹[when the ²[appropriate Government] is satisfied, after considering the report, if any, made under section 5A, sub-section (2)], that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders, ³[and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)].

³[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, (1 of 1967) shall be made after the expiry of three years from the date of such publication :

Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out

(y) *Ganga Prasad Verma v. State of Madhya Pradesh*, A.I.R. 1968, Madh. Pra. 22 ; A.I.R. 1965, S.C. 1763 and A.I.R. 1964 S.C. 1217 *rel. on*.

¹ These words were substituted for the words "whenever it appears to the local Government" by s. 4 of Act 38 of 1923.

² These words were substituted for the words "Local Government" by The Govt. of India (Adaptation of Indian Laws) Order, 1937 and 1950.

of public revenues or some fund controlled or managed by a local authority.

(2) ³[Every declaration] shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be ; and, after making such declaration, the ²[appropriate Government] may acquire the land in manner hereinafter appearing.

State Amendments

1. **Bihar**—By *Bihar Act XI of 1961 S. 6* :—
[See under part III, chapter III, Bihar (1)].
2. **Calcutta (Improvement Trust Act)**—By *Bengal Act V of 1911. S. 71* and Schedule as amended by *W. B. Act XXXII of 1955, S. 74*.
[See under part III, Chapter XV, W. B. (2)].
3. **Howrah (Improvement Trust Act)**—By *Bengal Act XIV of 1956*.
[See under part III, Chapter XIV, W. B. (3)].
4. **Madras**—By *Madras Act XXXVII of 1950, S. 79. Schedule, para 2(3)*:
[See under part III, Chapter IX, Madras (1)].
5. **Mysore**—By *Mysore Act 17 of 1961*.
[See under part III, Ch. X].
6. **Madhya Pradesh**—By *Madhya Pradesh Act II of 1967*.
[See under part III, Ch. VIII M. P. (1)].
7. **Nagpur (City)**—By *C. P. Act XXXVI of 1936 S. 61. Schedule and Cl. 2(2)*.
[See under part III, Ch. VIII, M. P. (4)].
8. **Patna (City)**—By *Bihar Act XXXV of 1951. S. 71. Schedule and para 2(2)*.
[See under part III, Ch. III, Bihar (7)].
9. **Punjab**—By *Punjab Act IV of 1922, S. 59, Schedule and Cl. 2(2)*.
[See under part III, Ch. XII, Punjab (4)].
10. **Maharashtra**—By *Bombay Act VIII of 1958, S. 3(4) and Notification Dt. 5-9-58*.
In sn. 6 (i) in sub-section (1)—
 (a) after the words “appropriate Government” insert the words “or as the case may be, the Commissioner”.
 (b) after the words “its orders” insert the words “or, as the case may be, under the signature of the Commissioner”.

² Substituted by Land Acquisition (Amendment and Validation) Act No. 13 of 1967 dated 12-4-1967.

³ Inserted by Act 13 of 1967.

- (ii) in sub-section (3), after the words, "appropriate Government", insert the words "or as the case may be, the Commissioner".

And

By Land Acquisition (Maharashtra Amendment and Validation of Certain Proceedings for Acquisition of Lands) Act XXIV of 1965.

[See under part III, Ch. IV-A, Maharashtra (2)].

11. **Jubbulpore (City)**—*By the City of Jubbulpore Corporation Act 1948 or C. P. and Berar Act III of 1950, S. 293.*

[See under part III, Ch. VIII, M. P. (10)].

Notes

Sec. 6 of the Act X of 1870 ran as follows :—

"Subject to the provisions of part VII of this Act, when it appears to the Local Government that any particular land is needed for a public purpose or for a company, a declaration shall be made to that effect under the signature of a secretary to such Govt. or of some officer duly authorised to certify its orders.

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of the public revenues, or out of some Municipal fund, or by a company.

The declaration shall be published in the local official Gazette, and shall state the District or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be.; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing."

Amendments

By section 4 of Land Acquisition (Amendment) Act XXXVII of 1923 the words "when the Local Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2)" in section 6 sub-section (1) have been substituted in place of "whenever it appears to the Local Government", and the word "Provincial" has been substituted for the word "Local" by the Government of India (Adaptation of Indian Laws) Order 1937, which again is substituted by, the word 'appropriate' by the Adaptation of Indian Laws Order 1950. Thereafter in sub-section (1) after the words "certify its orders" at the end the words beginning from, "and different declarations" etc., upto "the expiry of three years from the date of such publications" are added by Land Acquisition (Amendment and Validation) Act No. 13 of 1967 dated 12-4-1967. (*See objects and reasons under S. 5*).

Sec. 6 of the Act 1 of 1894 ran as follows :—" (1) Subject to the provisions of Part VII of this act, when the appropriate Government is satisfied, after

considering the report, if any, made under section 5A, sub-section (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a secretary to such government or of some officer duly authorised to certify its orders.

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be ; and, after making such declaration, the appropriate Government may acquire, the land in manner hereinafter appearing."

The Land Acquisition (Amendment and Validation)

Ordinance, 1967.

No. 1 of 1967.

The Ordinance was promulgated by the President and published in the Gazette of India Extraordinary on 20th January, 1967 and came into force at once.

The said Ordinance was repealed by the Land Acquisition (Amendment and Validation) Act No. 13 of 1967 published in Gazette of India, Extraordinary, on 12th April, 1967. The provisions of the Ordinance and the Act, are almost same excepting clause (3) of s. 4 and s. 5 which are newly added in the Act. The Act is reproduced below :—

The Land Acquisition (Amendment and Validation)

Act, 1967.

No. 13 of 1967.

An Act further to amend the Land Acquisition Act, 1894, and to validate certain acquisitions of land under the said Act.

Be it enacted by Parliament in the Eighteenth year of the Republic of India as follows :—

Short title. 1. This Act may be called the Land Acquisition (Amendment and Validation) Act 1967.

I of 1894, Amend-
ment of
section 5A. 2. In section 5A of the Land Acquisition Act, 1894, hereinafter referred to as the principal Act in sub-section (2) for the words "submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections," the words, figures and brackets "either make a

report in respect of the land which has been notified under section 4, sub-section (1) or make different reports in respect of different parcels of such land to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government," shall be substituted.

Amend-
ment of
section 6.

3. In section 6 of the principal Act,—

(a) in sub-section (1),—

(i) after the words "certify its orders", the following shall be inserted, namely :—

"and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)" ;

(ii) for the words "Provided that", the following shall be substituted, namely :—

"Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication :

Provided further that" ;

(b) in sub-section (2), for the words "The declaration", the words "Every declaration" shall be substituted.

I of 1967.

Validation
of certain
acquisitions.

4. (1) Notwithstanding any judgment, decree or order of any court to the contrary—

(a) no acquisition of land made or purporting to have been made under the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, and no action taken or thing done (including any order made, agreement entered into, or notification published) in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground—

(i) that one or more Collectors have performed the functions of Collector under the principal Act in respect of the land covered by the same notification under sub-section (1) of section 4 of the principal Act ;

(ii) that one or more reports have been made under sub-section (2) of section 5A of the principal Act,

whether in respect of the entire land, or different parcels thereof, covered by the same notification under sub-section (1) of section 4 of the principal Act ;

- (iii) that one or more declarations have been made under section 6 of the principal Act in respect of different parcels of the land covered by the same notification under sub-section (1) of section 4 of the principal Act in pursuance of one or more reports under section 5A thereof ;
- (b) any acquisition in pursuance of any notification published under sub-section (1) of section 4 of the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, may be made after such commencement and no such acquisition, and no action taken or thing done (including any order made, agreement entered into, or notification published), whether before or after such commencement, in connection with such acquisition shall be deemed to be invalid merely on the grounds referred to in clause (a) or any of them.

(2) Notwithstanding anything contained in clause (b) of sub-section (1), no declaration under section 6 of the principal Act in respect of any land which has been notified before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, under sub-section (1) of section 4 of the principal Act, shall be made after the expiry of two years from the commencement of the said Ordinance.

(3) Where acquisition of any particular land covered by a notification under sub-section (1) of section 4 of the principal Act, published before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, is or has been made in pursuance of any declaration under section 6 of the principal Act, whether made before or after such commencement, and such declaration is or has been made after the expiry of three years from the date of publication of such notification, there shall be paid simple interest, calculated at the rate of six per centum per annum on the market value of such land, as determined under section 23 of the principal Act, from the date of expiry of the said period of three years to the date of tender of payment of compensation awarded by the collector for the acquisition of such land :

Provided that no such interest shall be payable for any period during which the proceedings for the acquisition of any land were held up on account of stay or injunction by order of Court :

Provided further that nothing in this sub-section shall apply to the acquisition of any land where the amount of compensation

has been paid to the persons interested before the commencement of this Act.

5. (1) The Land Acquisition (Amendment and Validation) Ordinance, 1967, is hereby repealed :

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act as if this Act had come into force on the 20th January, 1967.

Notes

The Section :—The section is divided into three sub-sections—

- (A) The provisions of sub-section (1) are subject to the provisions of part VII of this Act. It imposes a duty upon the appropriate Government, but only if, after considering the report if any, made under s. 5A, sub-section (2), it is satisfied that any particular land is needed—
 - (a) For a public purpose, or
 - (b) For a company,to make a declaration to that effect.
- (B) Such declaration is to bear the signature of Secretary to such Government or of some other officer duly authorised to certify its orders and
- (C) different declarations may be made from time to time in respect of different parcels of land all of which must be covered by one notification under s. 4(1) irrespective one or more reports made under s. 5A.
- (D) The first proviso to this section lays down that no declaration covered by notification under s. 4 and published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1 of 1967 (i. e., 20-1-67), subsequently Land Acquisition (Amendment and Validation) Act No. 13 of 1967, shall be made after the expiry of three years from the date of publication of the notification.
- (E) The second proviso to this section lays down that such declaration shall not be made unless the compensation to be awarded for such property is to be paid—
 - (a) by a company, or
 - (b) wholly or partly out of public revenue, or
 - (c) some fund controlled or managed by a local authority.
- (F) Sub-section (2) provides :—
 - (i) The declaration shall be published in the Official Gazette which must state—
 - (a) the district or other territorial division in which the land is situate,
 - (b) The purpose for which it is needed,
 - (c) its approximate area, and
 - (d) the place of inspection of the plan of the scheme where such plan is necessary.

(G) Sub-section (3) lays down that—

- (1) such declaration shall be conclusive evidence that the land is needed for a public purpose, or
- (2) for a company, as the case may be,
- (3) only then the appropriate Government may acquire the land in the manner prescribed in Ss. 7 to 17.

Effect of amendment and time limit for publication of Declaration under s. 6 as amended :—Under the Land Acquisition (Amendment and Validation) Act No. 13 of 1967 which came into force on 12th April, 1967, the proviso to section 6 of the L. A. Act 1894, has been amended by virtue of sn. 3(ii) of the aforesaid Validation Act of 1967 to the effect as follows :—“Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967 (i. e., 20th January, 1967) shall be made after the expiry of three years from the date of such publication” (of the notification.)

In other words—

- (1) there must be one notification under sn. 4.
- (2) It must have been published after 20th January, 1967, in that case—
- (3) All declarations under s. 6 must be made within three years from the date of such publication of notification under s. 4.

The effect is, if the declaration is not published as stated above, both the notification and declaration must be void. It should be noted that by virtue of amendment of s. 6(1) by the above Validation Act, s. 3, different declarations may be made from time to time in respect of different parcels of any land covered by same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (whenever required) under section 5A, sub-section (2).

In case of acquisition and notification under s. 4, made before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (i. e., 20th January, 1967) no declaration shall be made after expiry of two years from the commencement of the said Ordinance, or in other words where notification was issued before 20th January, 1967, all declarations must be published within 20th January 1969. But subject to above, in case of an acquisition covered by a notification under s. 4 published before 20th January 1967 or has been made in pursuance of any declaration under s. 6 of the principal Act whether made before or after such commencement of the Ordinance (i. e., 20-1-67) and when such declaration has been made after expiry of three years from date of publication of such notification, interest at the rate of 6 per cent per annum on the market value of the land acquired from the date of expiry of said period of three years shall have to be awarded provided there is no injunction of court or compensation paid off. But s. 4(b) of the Land Acquisition (Amendment and Validation) Act 13 of 1967 provides that any acquisition in pursuance of any notification published under sub-section (1) of s. 4 of the principal act before commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967 (i. e., before 20-1-67) may be made after such date and no such acquisition and no action taken or thing done (including any order made,

agreement entered into or notification published) whether before or after 20-1-67 shall be deemed to be invalid merely on the grounds referred to in cl. (a) of s. 4 (of the 1967 Act) i. e., (1) one or more Collectors have performed the functions of Collector under same notification under s. 4 of principal act or (2) there is one or more reports under s. 5A of the principal act or (3) that one or more declarations have been made under sn. 6 of the principal Act in respect of different parcels of land but covered by same notification under s. 4 of the principal Act in pursuance of one or more reports under section 5A thereof notwithstanding any judgment, decree or order of any Court to the contrary. Sub-section (3) of s. 4 of the Amending Act 13 of 1967 presupposes the existence of a declaration.

Conditions precedent to acquisition :—Sections 6 & 7 of the Act lay down the conditions precedent to the exercise of jurisdiction and in case they are not complied with, the acquisitions would not be under the Act ; and the Government if they took possession, should be liable to be sued as trespasser (z).

Section 6 and the Constitution of India :—Section 6(1) of the Act provides that the appropriate Government can make a declaration under this section only when it is satisfied after considering the report, if any, under s. 5A that any particular land is needed for any public purpose or for a company.

When does a writ under Art. 226 of Constitution lie :—If the satisfaction so arrived at by the appropriate Government was illegal or unauthorised or without proper and sufficient evidence on record or if it is found that the owner of land was not given sufficient opportunity of hearing, or that the satisfaction arrived at was not by proper authority of the Government, or that the restrictions imposed are against natural justice, then the proceedings for acquisition may be quashed by a writ under Art. 226 of the Constitution.

Legislative Powers :—Prior to the Constitution (Seventh Amendment) Act 1956, acquisition for the "purposes of the Union" was a Union subject (Entry 33 list I), that for other public purposes, was a State subject (Entry 36 list II) while the power in matters relating to compensation (Entry 42 of list III) was concurrent. But the Constitution Seventh Amendment Act 1956 deleted Entry 33 of list I and Entry 36 of list II and also amended Entry 42 of list III which entry now reads merely as 'acquisition and requisition of property'. It follows therefore that the scope of acquisition by the State is very wide and it is not now necessary for disclosing in notification, that acquisition of land is for a purpose which was not purpose of the Union. Property acquired for purposes of Union shall vest in the Union and property acquired for purposes of a State shall vest in that State.

Art. 228 of the Constitution—Substantial question of law as to the interpretation of the Constitution :—Plainly enough this means that it must be a substantial question of law as to the interpretation of the Constitution. But what is the interpretation of Constitution ? It includes where the *vires* of a statute is challenged as being unconstitutional and being in violation of any article of the Constitution and in which case it can not be dismissed by saying that it raises only a question of interpretation of the statute and not

(z) *Daryadinomal v. Secy. of State*, 2 S.L.R. 68.

of the Constitution. In such case the interpretation of the statute will involve the interpretation of the Constitution (a).

Further, once the High Court is satisfied that the case is pending and involves a substantial question of law as to the interpretation of the Constitution which is necessary for the disposal of the case there is no option for the High Court but to withdraw the case to itself, (a-1).

S. 113 C. P. Code and Art. 228 of the Constitution may cover certain common cases but they are not co-extensive and the points for reference in the former are much wider, (a).

So far as Calcutta is concerned, for the purpose of an application under Art. 228 of the Constitution, the procedures laid down under sub-rule (1) of Rule 14-A, Part I, Ch. II of the Appellate Side Rules of the Calcutta High Court will apply (a).

Proper Authority:—‘State Government’ means the ‘Governor’ under s. 3(60)(b) of General Clauses Act. Under Art. 154 of the Constitution the executive power of the State shall be vested in the Governor and shall be exercised by him through officers subordinate to him. Under Art. 166 all executive action of the Government shall be expressed to be taken in the name of the Governor and all orders and instruments shall be authenticated in such manner as may be specified in the rules to be made by Governor and that the Governor shall make rules for more convenient transaction of the business of the Government and for allocation among ministers said business in so far as it is not a business with respect to which governor is required to act in his discretion. So there are Rules of Business in different States of India and the Secretary and the Deputy Secretaries are the persons generally authorised to authenticate. If the officer who has authenticated had really no authority then the order may be challenged as not of the Governor and there is no satisfaction in the eye of law, (a-1). Sometimes ministers are allocated to discharge some responsibilities of the Governor by the Rules of Business. It has been held that the minister is an Officer of the State, (b). In *Emperor v. Shib Nath Banerjea* (c), it was held that the Courts have jurisdiction to investigate the validity of order passed by the Governor and that the order was held to be bad in law as it did not appear that the matters involved were considered by the Governor at any stage, much less that at the time the order was made and that the Governor was satisfied with regard to any of the matters set out in order of detention. So the position is that ‘satisfaction’ of State Government means satisfaction of the Governor who may allocate some of his duties to ministers by Rules of Business. Also see *Dattaraya v. State of Bombay*, (d). Although it may be noted that the ‘State’ and the ‘State Government’ are not the same things so that an

(a) *Ranadev Chaudhury v. L. A. Judge*, 24-Parganas, 75 C.W.N. 375 (D. B.).

(a-1) *Khem Chand v. Union of India*, A.I.R. 1958 S.C. 1080 ; *Krishna Gopal Mukherjea v. State of Orissa*, A.I.R. 1960 Orissa 37.

(b) *S. Tara Singh v. Director of Consolidated Holdings*, A.I.R. 1958, Punjab 302..

(c) *Emperor v. Shib Nath Banerjea*, A.I.R. 1954, P.C. 156.

(d) *Bejoy Lakshmi Cotton Mill v. State of West Bengal*, 62 C.W.N. 640 ; *Sambhu Ghosh v. Bejoy Lakshmi Cotton Mill*, A.I.R. 1959 Cal. 552 ; *Dattaraya v. State of Bombay*, A.I.R. 1952, S.C. 181.

'Officer of State' may not be same thing as an 'Officer of the State Government'.

Rules of Business :—Rules of Business are framed under Art. 166 of the Constitution. In *Bejoy Lakshmi Cotton Mills v. State of West Bengal* (d), the Rules of Business was admittedly a 'confidential' document but by implication it was held to be binding. In matters of legislative nature, rules ought to be brought to the notice of public as they shall have to obey it, but when rules are administrative they need not be published (e). In *State of Kerala v. Joseph* (f), question was whether a non-publication of a rule required to be published under Cachar Akbari Act, makes the rules binding, it has been held to be not binding. Natural justice requires that before a law can be operative it must be promulgated or published so that all may know what it is (g).

Delegation :—The executive function of the Governor can be delegated by Arts. 154 and 166 of the Constitution to any subordinate officer, if it is not specifically mentioned in a statute itself. In England judicial or *quasi-judicial* functions can rarely be delegated while the administrative functions can often be (h). But the Supreme Court of India in *G. Nageswar Rao v. State of Andhra Pradesh* (i), held that judicial functions can also be delegated. It was held that the legislature, if it has not performed its own functions to specify the officers who could make the order but empowered the State Government to delegate its powers of making the order to any officer, it was held to be an unreasonable restriction within the meaning of Art. 19(5) of the Constitution (j). It is settled law that the provision of Art. 166 of the Constitution are directory and not mandatory in character and if they were not complied with, it still could be established as a question of fact that the impugned order was issued in fact by the State Government or Governor, (k). In *Bejoy Lakshmi Cotton Mills Ltd. v. State of West Bengal* (l), it has been held in connection with West Bengal Land Development and Planning Act 1948, what the authentication under art. 166(2) of the Constitution makes conclusive is that the order authenticated has been made by the Governor. But the further question as to whether in making the order the Governor has acted in accordance with law, remains open for adjudication. In the instant case Governor's personal satisfaction is not necessary as this subject is not an item of business with respect to which, the Governor is, by or under the Constitution, required to act in his discretion. Item 5 of the Rules of Business is the Department of Land and Land Revenue and the Governor

(d) *Bejoy Lakshmi Cotton Mill v. State of West Bengal*, 62 C.W.N. 640.

(e) *Murlidhar v. State of Andhra Pradesh*, A.I.R. 1959 Andhra Pradesh 437.

(f) *State of Kerala v. Joseph*, A.I.R. 1958 S.C. 296.

(g) *Harla v. State of Rajasthan* 1952, S.C.R. 110 followed in A.I.R. 1952 Tr. Co. 217.

(h) *Bernard v. National Dock Labour Board*, 2 Q. B. (1953) 18 (40).

(i) *G. Nageswar Rao v. State of Andhra Pradesh*, 1959 S.C.J. 967.

(j) *Khagendra v. D. M.*, 55, C.W.N. 53 (59); *State of Madhya Bharat v. Motilal*, 1952, M. B. 114.

(k) *R. Chitralekha v. The State of Mysore*, A.I.R. 1964, S. C. 1823 (1829); *State of Bombay v. Purushottam*, A.I.R. 1952 S.C. 317; *Ghaio Mall v. State of Delhi*, 1959 S.C.R. 1424; A.I.R. 1959 S.C. 65 followed.

(l) *Bejoy Lakshmi Cotton Mills Ltd., v. State of West Bengal*, 1967 (II) S.C.A. 35.

has allotted that business to a minister who again has got the power to make standing orders for disposal. Item 29 of the Rules of Business relates only to acquisitions under the Land Acquisition Act but a notification under the Land Development and Planning Act is not covered by that. Under Standing Order No. 5 the Minister-in-charge has authorised the secretary to permit other officers to deal with some of these matters and which was not disputed. So the notification was held valid. It follows from this case that as item 29 of the Rules of Business of West Bengal Government which is as follows :—

“29. All cases relating to land acquisitions by companies and industrial concerns or by Government under the Land Acquisition Act before there is notification under section 4 and agreement under section 41” and as according to Standing Order No. 1 all matters specified therein must be brought to the notice of the minister before the issue of orders and as the Minister in Charge of Land and Land Revenue has made standing orders by virtue of powers given to him under R. 19 and 20 of the Rules of Business and Standing Order No. 5 and as this power is absent so far as item No. 29 is concerned, so the Minister has no power of delegation in any acquisition under the land Acquisition Act and a notification under s. 4 of the L. A. Act cannot be issued by anyone unless the Minister has considered it personally. The effect of Article 258 cl. 1 of the Constitution is merely to make a blanket provision enabling the President by notification to exercise the power which the legislature could exercise by legislation, to entrust functions to the officers to be specified in that behalf by the President and subject to conditions prescribed thereby. By notification published on Sept. 1, 1960 under s. 4(1) of the L. A. Act, the Commissioner Baroda Division, State of Gujarat, exercising functions entrusted to him under a notification dated July 24, 1959 issued by the President under Art. 258(1) of the Constitution, notified that a particular plot of land was likely to be needed for a public purpose. The Commissioner delegated the function of the Commissioner to the Additional Special L. A. Officer who issued notices. In the meantime State of Gujarat has come into existence. It was contended that there was no valid entrustment by the President, and the function of Collector being *quasi judicial* cannot be redelegated. Held as already stated above and further that L. A. Act must be deemed to have been *pro tanto* amended, that impugned notification would have the force of law within meaning of s. 83 read with s. 2(d) of Bombay Re-organisation Act 1960 and continue even after State of Gujarat has come into existence. That delegation was valid as the function under s. 4 of L. A. Act is not *quasi judicial* function. It is open to the President subject to proviso of cl. (1) of Art. 73 of the Constitution with the consent of the State Government to entrust executive power to the State or any officers of the State. The word ‘functions’ in Art. 258(1) even though it is not qualified by word ‘executive’, still it is clear that only executive functions can be entrusted and it extends to no other kind of power (m). Art. 166 of the Constitution provides that all executive actions of the Government of a State shall be expressed to be taken in the name of the Governor and Art. 164 provides that all executive actions may be

(m) *Jayantilal Amratlal Shodan v. Commissioner, Baroda Division*, 1964 (II) S.C.J. 284.]

delegated to various officers of State including the ministers by Rules of Business. In s. 93 of the Government of India Act 1935 the words 'executive action' included both the executive and legislative power of the State Government. The word 'legislative' has been omitted in the Constitution in Art. 356. The executive functions and judicial or quasi judicial and legislative functions are distinct and separate (n). So it follows that judicial or quasi judicial or legislative powers cannot ordinarily be delegated or re-delegated.

When President assumes power in case of there being no constitutional Government e. g., in case of emergency or when ministry is dismissed under Articles 352 to 360 and the Articles 163 and 164 having been suspended by Proclamation, it follows that executive action can be delegated to officers of State but it is doubtful whether these powers can be re-delegated and whether judicial and quasi-judicial powers can be redelegated.

Quasi-Judicial acts :—The criteria to ascertain whether a particular act is a judicial or quasi-judicial act or an administrative act, have been laid down by Lord Justice Atkin in *Rex v. Electricity Consumers (o)*, wherein it was held that the conditions of a quasi-judicial act are that (a) the body of persons must have legal authority, (b) authority to decide questions affecting rights of subjects, (c) they should have a duty to act judicially and (d) if a statute empowers an authority not being a Court in the ordinary sense, to decide disputes arising out of a claim which is opposed by another party when it is said to be that there is a *lis* and *prima facie* there is a duty to act judicially. It is already stated that judicial or quasi-judicial acts are distinct from executive acts and cannot ordinarily be delegated.

In *A. K. Kraipak & Ors. v. Union of India (p)*, it has been held by the Supreme Court that the dividing line between an administrative and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look (1) to the nature of the power conferred, (2) the person or persons on whom it is conferred, (3) the frame work of the law conferring that power, (4) the consequences ensuing from the exercise of that power and (5) the manner in which that power is expected to be exercised.

Whenever a complaint is made before a Court that natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. The ambit of *certiorari* can be said to cover every case in which a body of persons of a public as opposed to purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially.

Natural Justice :—It has been held in *Nageswar Rao's case (q)*, that

(n) *Orient Paper Mills Ltd. v. Union of India*, 1969 S.C.J. (1) 110.

(o) *Rex v. Electricity Consumers*, L. R. (1924) K. B. 171 followed in *G. Nageswar Rao v. State of Andhra Pradesh*, 1959 S. C. J. 967

(p) *A. K. Kraipak v. Union of India*, A.I.R. 1970 S.C. 150.

(q) *Nageswar Rao's case*, 1959 S.C.J. 967 (1988).

hearing of any dispute by one and deciding by another, is a violation of principles of natural justice. It was held there that a head of the department can not decide a matter in which his own officers are involved or in other words one cannot be a judge of his own wrong. The rules of natural justice of giving prior notice of acquisition or requisition can be excluded by Statute expressly or by implication although inequality of procedures can be challenged under Art. 14 of the Constitution, as has been held in *Mihir Kumar Sarkar v. State of West Bengal*, (q-1), in a case under West Bengal Land (Requisition and Acquisition) Act II of 1948. But it may be noted that this finding seems to go against some previous decisions, (q-2).

'Satisfaction' must be bona fide :—Decisions depending upon satisfaction of Governor, or the Government, must be shown to have been arrived at *bona fide* and not colourable or *mala fide* and must be in accordance with law as otherwise the court will have the right to intervene, (r).

Declaration for acquisition of land :—Up to this stage the Collector has usually taken no proceedings under the Act. Before any formal proceedings can be taken, a declaration must be made by Government under s. 6. The declaration under sec. 6 should be published after the notification under sec. 4(1) has been published. But the simultaneous publication of the two notices does not render the proceedings illegal or void (s). Where the Government dispenses with compliance with the provisions of sec. 5A and also declares that the land is needed for a public purpose, there is no irregularity in publishing the two notifications on the same day (t). A draft of the declaration is always required from the Collector when he submits his estimate. It must contain the area of the land, the district in which it is situated, the purpose for which it is acquired, and the place where a plan of it can be seen. The Act does not require that the boundaries should be given but in all ordinary cases they are invariably given. In preparing the draft declaration the Collector should see that there are no objections to the acquisition. Mosques, temples, churches, tombs, or graveyards should not be included unless this is necessary, and if they are included, the fact should be reported and it should be stated whether there is or is likely to be an objection on the part of the public. The question of severance should also be considered. The Government instructions require that the estimate should contain a certificate by the Collector to the effect that "the estimate is fair and the rates have been arrived at after local enquiries and inspection on the ground and with reference to the settlement records and road-cess papers and the records of the Registration Department". *Peterson, pp.*

(q-1) *Mihir Kumar Sarker v. State of West Bengal*, 75 C.W.N. 831 (D. B.)

(q-2) *Durayappa v. Fernando*, (1967) 2 All E.R. 152 ; *Schmidt v. Secy. of State*, (1969) 2 W.L.R. 962 ; *State of M.P. v. Champalal*, 1962 S.C.A. 59, A.I.R. 1965 S.C. 124 ; *Jagannath v. State of Orissa*, (1945) S.C.R. 1046.

(r) *Ganga Behary Swaika v. Calcutta Pinjrapole Society*, A.I.R. 1968 S.C. 615 ; *Ratilal Shankarbhai v. State of Gujarat*, A.I.R. 1970 S.C. 984.

(s) *B. K. Abdul Azeez v. State of Mysore*, I.L.R. (1956) Mys. 146; A.I.R. 1957, Mys. 12.

(t) *Somawanti v. State of Punjab*, A.I.R. 1963 S.C. 151 ; (1963) 2 S.C.R. 774 ; (1963), 1 S.C.J. 35,

4 & 5. After considering the estimate, report, objections etc., the Government decides whether the lands are required for public purpose and if it decides in favour of acquisition and approves the proceedings of the Collector, it orders a declaration to be published in the local official Gazette.

Absence of declaration :—A declaration under this section is essential to give validity and jurisdiction to the acquisition of land. If a declaration is not made or is materially defective, the acquisition proceedings are *ultra vires* and void (u).

Declaration for acquisition of structure only :—A bungalow has been seen to be included within the definition of sec. 3 (a) of the L. A. Act. So when the Govt., claimed the land as their own and did not propose to pay compensation therefor, but only said that they resumed the land, a claim for compensation in respect of the bungalow on it comes under the L. A. Act, (v). Where the Government has within the area of Cantonments granted land to individuals who have erected buildings on it and has, in exercise of its powers in that behalf issued notification of resumption to the grantees, and where the grantees refuse the offer of compensation for the buildings contained in the notification, a notification by the Government under the Land Acquisition Act, 1894 for this purpose of expropriating the owners of the buildings is valid notwithstanding that it is a notification for the acquisition only of buildings on the land and not the land itself, for in the Act the expression "Land" is stated to include benefits to arise out of land and things attached to the earth and it would be of no purpose for the Government to state in its notification of acquisition under the Act that it proposed to acquire the land in as much as the land is its own property. Lord Macmillan in delivering the judgment of the Privy Council in *Hari Chand v. Secretary of State* (w), observed, "The first point taken here has been that the notification was bad because it was not a notification for the acquisition of the land, but a notification of an intention to acquire only buildings on the land. It was said that the Land Acquisition Act only authorised notification of an intention to acquire land and therefore the whole proceedings under the Land Acquisition Act were fundamentally bad because the notification upon which the proceedings started was invalid. It has to be noticed, however that in the L. A. Act "the expression 'land' includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth." In the present case, the Government's position being that they were the owners of the site, it would have been manifestly idle for them to have proposed to acquire what was already their own and therefore when they sought to put in force the provisions of the Land Acquisition Act they naturally requisitioned what was not their own but what they desired to acquire, namely, the buildings on the land. The Court did, however, incidentally consider the

(u) *Mata Din v. State*, A.I.R. 1952 V.P. 16.

(v) *Damodar Das v. Secretary of State*, I.L.R. 1938 All. 994 ; 1938 A.L.J. 1171 ; 1938, A.W.R. 811.

(w) *Hari Chand v. Secy. of State*, 44 C.W.N. 5 : 70 C.L.J. 334 : A.I.R. 1939, P.C. 235.

question of the validity of the notice, and their Lordships agreed with the view taken that the notification is not open to objection."

Publication of declaration :—The declaration when published in the Gazette gives public notice of the intended acquisition. It is not open to any person or authority to challenge it or to say that the land is not needed for that purpose or that another piece of land should be taken or that the purpose is not a public purpose. On these points the declaration is conclusive. Once it was issued, all the land included within it must be acquired unless Government withdraws from the acquisition under section 48. This is the general rule. *Peterson, p. 6.*

The law requires that when any particular land is required for the two purposes for which the Local Government is authorised by the Legislature to put the Act into operation, a declaration, to the effect should be previously made. It is very desirable that the Local Government should endeavour to avoid issuing different declarations for the acquisition of the portions of the same tract of land when the declarations follow each other in rapid succession, although the present law allows it. The encouragement of piece-meal acquisition results in loss to all the parties concerned not excluding the Government itself (x). The acquisition by the Collector of the whole land of a claimant in the face of a declaration for a partial acquisition thereof without publication of a fresh declaration, is illegal and *ultra vires* (y).

Delay in publication of declaration :—Acquisition proceedings could not be held to be illegal and void by reason of the lapse of some years between the notification under sec. 4 and the notification under s. 6 formerly. In the case of an elaborate and complicated scheme for which the acquisitions is made the detailed revision of which necessarily takes much time, there is bound to be delay and lapse of time, and in such a case it was not open to the Court to treat the notification and proceedings as illegal and void (z). But this is no longer good law in view of Amending Act 13 of 1967. Where no steps were taken by the authorities immediately after publication of declaration under s. 6(1) to make award of compensation, and to take possession of the land, it must be held that after the issue of notices under sections 4 and 6 of the L. A. Act the Government was not justified in allowing the matters to drift. It is intended by the scheme of the Act that the notification under s. 6 of the Act must be followed by a proceeding for determination of compensation without any unreasonable delay. In such cases it was open to the aggrieved party to claim writ or orders compelling the State Government to complete the assessment and payment of compensation (a).

Effect of notifications under section 6 and s. 4 :—On issue of a notification under section 6, notification made under section 4 is exhausted and cannot thereafter support any subsequent notification under section 6. There is

(x) *Fink v. Secretary of State*, 34 Cal. 599.

(y) *Bhagwandas Nagindas v. Special Land Acquisition Officer*, 17 Bom. L.R. 192.

(z) *Parshottam v. Secretary of State*, 39 Bom. L.R. 1257 : 174 I.C. 67 : 1938 A.I.R. (B) 148.

(a) *Ambalal Parshottam v. Ahmedabad Municipal Corporation*, A.I.R. 1973 S.C. 1228.

thus no notification under section 4 to support the second notification under section 6, (b).

When a Declaration and an award to be made :—Specifically no time limit is given as to when, after the declaration under section 6 is made, an award is to be made. Section 6 as amended by Act 13 of 1967 provides that in case of a notification made under section 4, prior to commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, that came into force on 20-1-67, no declaration shall be made after the expiry of two years from the date of commencement of the said Ordinance. Sub-sec. (3) of sec. 4 of the Act 13 of 1967 provides that when there has been a notification under sec. 4 of the principal Act published before the commencement of the said Ordinance, 1967, and that there has been a declaration under sec. 6 of the principal Act whether made before or after such commencement of the said Ordinance and such declaration is or has been made after the expiry of three years from the date of publication of such notification, then interest at the rate of 6 per cent per annum on the market value of such land as has been determined shall have to be paid from the date of expiry of said period of three years to the date of tender of payment of compensation unless it is already paid.

S. 11 provides that on the appointed date that is the day fixed in the notice issued under section 9, or on some subsequent date, the Collector is to hold enquiry, to hear the parties who have appeared, investigate their claims and consider the objections and respective interests claiming the compensation. At the conclusion of this enquiry, which may be adjourned from time to time under section 13, the Collector must make his award irrespective of whether or not all the claimants have appeared or not. So it follows that the Collector is bound to give his final award as soon as enquiry is completed under s. 11. If it is not done, a writ petition is maintainable, (a) *ibid.*

Compensation to be paid wholly or partly out of public revenue :—(See notes under sec. 3). Section 6 of the Act which requires that where an acquisition of land is made by Government otherwise than on behalf of a company, the compensation to be awarded must be paid either wholly or partly out of public revenues, must, receive a reasonable construction and must be treated as implying payment of some part that is substantial and material. Whether a small contribution by the Government meets the requirements of law would depend upon the facts in each particular case (b-1).

When the acquisition is for public purpose the whole or part of the compensation is to come out of public revenue etc., and where the acquisition is for a company the whole of the compensation has to be paid by the company. The court is not precluded from ensuring whether the notification that the land was needed for a public purpose was made in fraud of the Act, namely, against the proviso to sec. 6(1), which required that such notification could not be made unless part or whole of the compensation

• (b) *Doongarsee & Sons v. State of Gujarat*, A.I.R. 1971 Guj. 46 (D.B.).
(b-1) *Somawanti v. State of Punjab*, A.I.R. 1963 S.C. 151 ; (1963) 2 S.C.R. 744 ; (1963) 2 S.C.J. 35.

came out of the public revenue or some fund managed or controlled by a local authority. If the acquisition is for a company the provisions of Part VII of the Act must be complied with (c). Bombay State Transport Corporation is not a public authority and provisions of Part VII of the Act having not been complied with and no part of the compensation money having come out of public revenue, the acquisition was held to be void (d). But it is absolutely essential that the declaration of intention of the Government to contribute should precede the notification under S. 6, (e).

The validity of the acquisition proceedings under the L. A. Act depends upon the existence of 'public purpose' and not upon the question whether the whole cost of the scheme could legally be debited to the Municipality or public body on whose behalf the acquisition are made. A notification under s. 6 does not therefore become illegal because it seeks to acquire lands for the purpose of recouping the cost of the scheme (f). It is sufficient compliance with the provisions of the proviso to s. 6(1) of the Act, if any part of the compensation is paid out of public funds. One anna is a part and although a small part, is nevertheless a part (g), but this ruling is not followed.

When suit lies to set aside declaration :—A notification under s. 6 of the L. A. Act is conclusive so far as s. 4 of the Evidence Act is concerned. That does not debar the Civil Court from enquiry into the validity of the steps leading to the recommendation and it is quite competent to enquire into the legality or otherwise of the acts of the acquiring bodies. A declaration under s. 6(1) of L. A. Act, is final and cannot be questioned in a Court of law in the absence of an allegation or charge that the action of the Government in deciding the acquisition in question is in fraud of its powers, (i).

A declaration under s. 6(3) is ordinarily conclusive of the fact that the land is needed for a public purpose or for a company. It cannot be conclusive of the legality to acquisition, if it be found that any illegality was committed at the proceedings or if there was material violation of any of provisions of the Act in any of the stages prior to the declaration. If the declaration says that the land is needed for a public purpose whereas in fact the land is admittedly required for a company, it is difficult to see how such a declaration can be conclusive of anything. It cannot be conclusive of the fact that the land is needed for a public purpose, since that is not so ; and it

(c) *State of West Bengal v. P. N. Talukdar*, A.I.R. 1965 S.C. 646 ; *Shyam Behary v. State of Madhya Pradesh*, 1965 (1) S.C.A. 588 : A.I.R. 1965 S.C. 427.

(d) *Valjibhai Mooljibhai Soneji v. State of Bombay*, (1963) 3 S.C.R. 686 : A.I.R. 1963 S. C. 1890.

(e) *Vankatapathi Raju v. State of Andhra Pradesh*, A.I.R. 1957, Andh. Pra. 686 ; *Chandra Kanto Sharma v. Dy. Commr. & Collr., Nowgong*, A.I.R. 1971, A. & N. 1 (F. B.).

(f) *Parshotam v. Secretary of State*, 39 Bom. L. R. 1257 : 174 I.C. 67 ; 1938 A.I.R. Bom. 148.

(g) *Surjyanarain v. Province of Madras*, I.L.R. 1946 Mad. 153 : A.J.R. 1945 Mad. 394 : 1945 (2) M.L.J. 237 (F. B.).

(h) *Somawanti's case*, A. I. R. 1963, S. C. 151.

(i) *Manick Chand Mahto v. Corporation of Calcutta*, 48, C. 916 ; *Suryanarain v. Province of Madras*, I.L.R. (1946) Mad. 153 ; 58 L.W. 430 ; 1945, M.W.N. 511 ; (1945), 2. M.L.J. 237 (F. B.) ; 1945 A.I.R. (M) 394 ; 221 I.C. 415.

can hardly be conclusive of the fact that the land is required for a company, if this is not stated. But when the parties are fully aware of the purpose for which the acquisition is made, a defect in the declaration will not vitiate the acquisition proceedings, (j).

The question whether the lower court was right in shutting out evidence and preventing parties from contending that compensation should be paid as the land was not required by Government for "public purpose", the relevant facts being that under a Kowl (Grant by the Crown) which was granted before the L. A. Act was in force, Government granted the particular property to the claimant's predecessor in title, it was held that Cl. 16 of the Kowl cannot be held to be conclusive proof for purpose of defeating claimant's right to compensation, (k).

Acquisition to be in conformity with declaration :—The Collector under the L. A. Act 1 of 1894 has limited jurisdiction. He is bound by the official declaration in the local official Gazette. The Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If he does so, he commits an act of trespass. He has to find out the precise quantity of land notified for acquisition within specified boundaries given in the declaration, value the same under the provisions of Act and give possession accordingly. If the Local Government committed a mistake by giving an erroneous boundary the Collector cannot cure the mistake. If the land acquired be for Government purposes, and if the Government takes possession of land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country ; and so is a company if the acquisition is for its purposes (l).

Interpretation of Declaration :—S. 6, L. A. Act requires the land proposed to be acquired to be specified but it does not require a plan to be prepared at that stage, and made a part of the notification. Where the text of the declaration made under s. 6 of the Act, is that the whole of certain cadastral plot was proposed for acquisition, but the plan to which reference was made in the declaration does not comprise the whole of that plot, such plan cannot, on the principle of *false demonstratio non nocet* restrict the operation of the acquisition to only such portion of the plot as would be covered by the plan. In these circumstances the plan can only be referred to for elucidation where elucidation is necessary, but cannot subordinate the text of the declaration (m). Where there is not the slightest ambiguity or doubt as to what actual land was proposed to be acquired, and the only error arises from the question whether in fact the boundary line between the two districts lay to the north or south of the specific and definite land mentioned in the

(j) *Radha Satsang Sabha v. Tara Chand*, 1939, A.L.J. 757 : 1939. A.W.R. 436 : 1841. C. 293 ; 1939 A.I.R. (All.) 557.

(k) *Rustomji Ardeshir Wadia v. Assistant Development Officer, Bandra*, I.L.R. (1940), B. 492 ; 42 Bom. L.R. 506 ; 191, I.C. 27 ; 1940 A.I.R. (B) 260.

(l) *Harish Chandra Neogy v. Secretary of State*, 11 C.W.N. 875 ; *Gajendra Sahu v. The Secretary of State*, 8 C.L.J. 39.

(m) *Province of Bengal v. Mohamed Yusuf*, I.L.R. (1942), 2 C. 378 ; 206 I.C. 118 ; 1943, A.I.R. (C) 122.

declaration and actually acquired, the acquisition of the land was held to be quite effective and valid (n).

When notification fails partially :—If the Government had not applied its mind as to whether the land is waste or arable, the notification does not fail in its entirety but only to the extent of urgency clause (o).

If all the land included within the declaration is not required, Government can be asked to withdraw from the acquisition under section 48, after making such compensation due for the damages suffered by the owner in consequence of the notice or of any proceedings thereunder. Under the Calcutta Improvement Act the Collector is bound to acquire the land under declaration within two years from the date of the publication of the declaration under section 6 and if, within the period of two years from the date of the publication the declaration under section 6, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of such land shall be entitled to receive compensation for the damages suffered by him in consequence of delay." Sec. 48A of the Land Acquisition Act, 1894 with modifications introduced by Act V of 1911 (B. C.) embodied in loco.

Public purpose added but undeclared is wholly void :—In *Gadadhar Ghosh & Ors. v. The State of West Bengal* (p), it was held that although it may not be necessary to declare the exact nature of public purpose in the notification as held in *State of Bombay v. Bhanji Munji* (q), still if the purpose be challenged before a Court of law the same has to be established by evidence *aliunde*. But the converse of the above is not a legal proposition, namely when the purpose is expressly stated in the notification or the declaration and that is challenged as not a public purpose, it does not become permissible to add to that purpose other purposes not notified or declared and try to support the acquisition both on the notified and declared purpose and also on the unnotified and undeclared purpose. Accordingly the declaration was quashed under Art. 226 of the Constitution.

Partial or piecemeal acquisition :—When by agreement with the owner, a portion of the land in respect of which notice issued under section 9 of L. A. Act, it was held that there was nothing either in sec. 78 of the C.I. Act or sec. 48 of the L. A. Act to suggest that the acquiring authority can not acquire only a portion of the land in respect of which notice was issued under section 9 of the latter Act (r). But piecemeal acquisition of lands for the same purpose in the same tract by separate declarations in quick succession is not desirable. Piecemeal acquisition results in loss to all parties concerned including the Government (s). Piecemeal acquisition of land under one declaration is not permitted unless such lands are held by different individuals or proceedings for acquisition are held up by circumstances over which the

(n) *Sukdev Saran Dev. v. Nripendra Narain*, 76 C.L.J. 430.

(o) *Hiralal Harjivandas v. State of Gujarat*, I.L.R. (1964), Guj. 814.

(p) *Gadadhar Ghosh v. State of West Bengal*, 67 C.W.N. 460.

(q) *State of Bombay v. Bhanji Munji*, A.I.R. 1961 S.C. 1203.

(r) *Secretary of State v. Mahit Sha*, 41 C.W.N. 437.

(s) *Fink v. Secretary of State*, 34 Cal. 599 : *R. C. Sen v. Trustees for the Improvement of Calcutta*, 48 Cal. 892 : 33 C.J.L. 509.

acquiring authority has no control (t). Under the Amending Act 13 of 1967 there may be several declarations for separate plots but the notification must be one.

Declaration in respect of partial interest :—A declaration under this section can not be made for the acquisition of a partial interest only in land. There cannot therefore, be any outstanding interest or encumbrance after acquisition (u).

Absence of area in the declaration :—Declaration under s. 6 is issued after the Government has applied its mind to the exact area and location of the lands which are needed for the purpose and are, therefore, acquired. The lands must therefore be particularised in the declaration under s. 6 and in the absence of the area, the declaration becomes *ultra vires* s. 6(2), as regards the plots whose area is not given. The absence of area in a declaration under s. 6 would give a blank cheque to the administrative authorities thereafter to oust the owner from the possession of any portion and from any quantity of partial plots according to their pleasure. This would be a deprivation, not according to law but according to executive fiat; apart from that, any such procedure would make such law itself unconstitutional as imposing an unreasonable restriction (v). But a notification can not be struck down only on solitary ground that it has omitted to mention plot number or names of owners of land sought to be acquired (w).

After declaration Collector to take order for acquisition

7. Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the ¹[appropriate Government], or some officer authorized by the ¹[appropriate Government] in this behalf, shall direct the Collector to take order for the acquisition of the land.

State Amendments

Bihar.—By *Bihar Act XI of 1961* for the words “so declared” the words “so declared by the appropriate Government” shall be substituted.

Maharashtra.—*Bombay Act VIII of 1958 and notification No. L. A. 2558 dated 5-9-1958.*

In its application to the State of Maharashtra excluding the transferred

(t) *Corporation of Calcutta v. Omeda Khatun*, A.I.R. 1956, Cal. 122; 60 C.W.N. 319.

(u) *Bombay Improvement Trust v. Jalbhoy*, 33. B. 483.

(v) *Abdul Jabbar v. State of West Bengal*, I.L.R. (1967), 1 Calcutta 157; *Syed. Abdul Gaffar v. State of West Bengal*, 73 C.W.N. 649.

(w) *Subedar Samandar Singh v. State of Punjab*, A.I.R. 1968, Punj. 72; *Kanailal Mondal v. State of West Bengal*, 73 C.W.N. 422.

¹ These words were substituted for the words “Local Government” and later for “Provincial Government” by the Govt. of India (Adaptation of Indian Laws), Order 1937 and 1950 respectively.

territories, in section 7, after the words "in this behalf" the words "or, as the case may be, the Commissioner" shall be *inserted*.

Gujarat.—Same as that of Maharashtra.

Notes

Sec. 7 of the Act X of 1870 ran as follows :—

7. "Whenever any land shall have been so declared to be needed for a public purpose, or for a company, the Local Government, or some officer authorised by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land."

Scope :—After the declaration is published, Government issues an order to the Collector under section 7 to take order for the acquisition of the land included in it. On receipt of his order, the Collector proceeds to take action under the Act. It is not competent to the Collector to commence action merely on the issue of the declaration under the preceding section. In West Bengal the Board of Revenue, L. P. are authorised under s. 7 of the Act to direct the Collector to take order for the acquisition of land for public purpose or for a company in all cases on the publication of declaration under s. 6 of the Act. *Vide Bengal Government (Revenue Dept.) Order No. 476 : d. 27-1-1905. Bengal Land Administrations Manual, 1910, P. 11.* Throughout the proceedings the Collector acts as the agent of the Government and is in no sense a judicial officer, (a), nor are the proceedings before him, judicial proceedings. Where the Collector goes beyond the terms of declaration his proceedings are to that extent *ultra vires* (b). Where the Government by a notification under s. 6 authorises the Deputy Commissioner to take order no other officer can make an award (c).

What is to be acquired :—We have seen that it is land as defined in sec. 3(a) that is the subject of acquisition, and the land, when acquired, becomes free from all encumbrances (sec. 16), and all private rights cease. Therefore what has to be acquired in every case under the Act is the aggregate of rights in the land, not merely subsidiary right, such as that of a tenant (d).

User after acquisition :—A public body which has acquired land under the L. A. Act in this country for one specific purpose, may not subsequently abandon that purpose and use the land so acquired for some other purpose for which they have not acquired it (e).

Agreement for public user :—Agreement between Government and the company providing for rights of public to use works and buildings of company with a provision for framing rules and regulations will not be bad because of absence of rules, (f).

(a) *Ezra v. Secretary of State*, 39 Cal. 36.

(b) *Harish Chandra v. Secretary of State*, 11 C.W.N. 875.

(c) *Macdonald v. Secretary of State*, 123 P.R. 1904.

(d) *Babujan v. The Secretary of State*, 4 C.L.J. 259, or Fishery right, *R. Yam Chandra v. The Secretary of State*, 7 C.L.J. 445 : 12 C.W.N. 569. *Aja Sh*

(e) *Guru Das Kundu Choudhury v. Secretary of State*, 18, C.L.J. 244, (see notes under section 40). Also see *Gadadhar's case*, 67 C.W.N. 460.

(f) *Chirkui Tewari v. State of West Bengal*, 70 C.W.N. 1.

Agreement for sale how far affected by acquisition under the Act :— Although proceedings have been taken for the compulsory acquisition of land under the Land Acquisition Act, the owner and the acquiring party remain competent to enter into an agreement as to the price, and an agreement so made is capable of being enforced in the ordinary way. An agreement between the parties as to the price does not interfere with the jurisdiction of the Collector under the Act, (g).

On acquisition under the Act, the Collector is under no obligation to be bound by the contract, but if he likes he may disregard the contract or he may proceed on the footing of the contract (h). But in *Ananta Ram Banerji v. Secretary of State* (i), it was held that the Board of Trustees for Improvement of Calcutta has power to enter into a contract for settling the price of the land with the owner before proceedings under the L. A. Act are started. In the Land Acquisition proceedings, the Collector is under no obligation to disregard the contract and to proceed to determine the market value under s. 11 of the Act. He should rather respect the contract and make an award on its terms. If a reference is made by the Collector under s. 18 of the Act, the Court is not bound to take evidence of market value and to award compensation on its basis. The contract between the owner and the Board which is a perfectly valid one and which can be enforced in a Civil Court would prevent the owner from leading any evidence relating to market value before the court or in proceedings upon any other footing than that of the contract.

The Privy Council has held that the L. A. Officer under sec. 11, as also the District Judge under sec. 18 of the L. A. Act 1894 is bound to exercise his own judgment as to the correct basis of valuation when assessing compensation for land acquired under the Act and his judgment cannot be controlled by any agreement between the parties interested (j).

Land to be marked out measured and planned

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof), a plan to be made of the same.

(g) *The Fort Press Company Ltd. v. Municipal Corporation, City of Bombay*, 44 B. 797 : 46 B. 767 (P.C.) ; 43 M.L.J. 419 ; 16 L.W. 654 ; 24 Bom. L.R. 1228 ; (1922) M.W.N. 798 ; 36 C.L.J. 538 ; 68 I. C. 980 ; (1922), A.I.R. (P.C.) 365.

(h) *Bijoy Kanto Lahiri Chowdhury v. Secretary of State*, 58 C.L.J. 38 (46).

(i) *Ananta Ram Banerji v. Secy. of State* I. L. R. (1938) 1 Cal. 231 : 41 C. W. N. 1291 : 66 C. L. J. 134 : 1937 A. I. R. (C) 680.

(j) *M. Saniullah v. The Collector of Aligarh*, 73 I.A. 44 : I.L.R. (1946), All 185 ; 50 C.W.N. 401 ; 1946 A.W.R. 99 ; 1946 A.L.J. 221, 1946, A.L.W. 263 ; 48 Bom. L.R. 439 ; 1946 O.W.N. 212 ; 1946, M.W.N. 158 ; A.I.R. 1946 (P.C.), 75 ; 223, I.C. 550 ; (1946), 1, M.L.J. (P.C.) 320

State Amendments

Gujarat.—*The Land Acquisition (Gujarat Unification and Amendment) Act 20 of 1963 :*

“8. In Section 8 of the Principal Act, for the words “cause it to be measured” the words, brackets and figures and letters “cause the land (unless it has already been measured under section 3A or 4 or deemed to be measured under section 3-C) to be measured,” shall be substituted.”

Mysore.—*The Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961 :*

“11. Section 8 of the Principal Act shall be omitted.”

Notes

Section 8 of Act X of 1870 ran as follows :—

“The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.”

Measurement before acquisition :—Section 8 of the Act requires the Collector to mark out the land and to measure it and to make a plan of it, unless the land has already been measured and a plan made. In Calcutta, the Collector usually proceeds upon the survey map and in all districts which have been recently surveyed, this is the safest course, as there is a legal presumption in favour of the survey map. But, if necessary, the Collector will have a fresh survey made. *Peterson* p. 7. After declaration this is the first important step to be taken by the Collector in the acquisition proceeding. The Collector is bound by the official gazette. It should be noted that the Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If he does so, he commits an act of trespass. He has to find out the precise quantity of land notified for acquisition within the special boundaries given in the declaration, value the same under the provisions of the Act and give possession accordingly. If the Local Government committed a mistake by giving an erroneous boundary, the Collector cannot cure the mistake. If the land acquired be for Government purposes and if the Government takes possession of land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country ; and so is a company if the acquisition is for its purposes, (k).

Obstruction to measurement :—Whoever wilfully obstructs any person in doing any of the acts authorised by section 4 or section 8, shall on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to a fine not exceeding fifty rupees or to both. sec. 46, *infra*.

(k) *Harish Chandra Neogy v. Secretary of State*, 11 C.W.N. 875 ; *Gajendra Sahu v. The Secretary of State*, 8 C.L.J. 39.

Notice to persons interested

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866 (XIV of 1866).

State Amendments

1. **Guzarat.**—*By the Land Acquisition (Guzarat Unification and Amendment) Act 20 of 1965.*
[See under Part III, Chapter IV-B, Guzarat (2)].
2. **Mysore.**—*By Mysore Act 17 of 1961 :*
(See under Part III, Chapter X, Mysore).

Notes

Sec. 9 of the L. A. Act X of 1870 ran as follows :—

“The Collector shall then cause public notice to be given at convenient places on or near the land to be taken stating that Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent

before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

The Collector shall also serve notice to the same effect on the occupier (if any) of such land, and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorised to receive service on their behalf, within the Revenue District in which the land is situate.

In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post."

Public or general notice :—After declaration under section 6 that any land is needed for a public purpose or for a company when the Collector is authorised by the Local Government to acquire the land, he is to give (1) public or general notices and also (2) special notices on the occupier of and persons interested in the land so far as they are known to him. Section 9 provides that the Collector must cause public notice to be given at convenient places at or near the land to be taken, stating that the Government intends to take possession of the land and claims to compensation for all interests in such land may be made to him. "Notice under section 9 is, therefore, essential to the exercise of the Collector's jurisdiction in order to give validity to a proceeding for the acquisition of land and finally to the award in which they terminate. The power of acquisition with all the statutory limitations and directions for its use must be strictly pursued, and every essential pre-requisites to the jurisdiction called for by the statute must be strictly complied with" (l). If reasonable opportunity of being heard is not given the proceedings may be quashed (m).

Effect of omission to issue notice under S. 9(1) :—It has been held that omission to issue notice under s. 9(1) is nothing more than the omission of a preliminary step and it can not be said that for the non-issue of the notice, the entire proceedings are invalidated (n). But the soundness of the conclusion is open to doubt in view of the fact that the same case went up to Supreme Court reported in A. I. R. 1961 S. C. 343 wherein the reasonings of the Punjab High Court were rejected though the conclusions were accepted on other grounds. But the abovementioned particular point was not raised in the Supreme Court and no decision given (n).

Public notice—what to contain :—Clause (2) prescribes what the notice shall state and amongst other things the notice shall require all persons interested in the land to appear before the Collector at a time mentioned in the notice. It is expressly provided that the time shall not be earlier than 15 days after the publication of the notice. The Act requires that the two notices are to be served and accordingly the service of the first notice containing what is prescribed by the Act was absolutely necessary and

(l) *Maharaja Sir Rameswar Singh v. Secretary of State*, 34 Cal. 470 : 11 C.W.N. 356 : 5 C.L.J. 669.

(m) *Kiron Devi v. I. T. O.*, 70 C.W.N. 141.

(n) *Jhandulal v. State of Punjab*, A.I.R. 1961, S.C. 343, from A.I.R. 1959, Punj. 535,

the same is not dispensed with merely because the second notice is served. The words "to the same effect" in cl. (3) really mean that the second notice should have the same matters mentioned in it including the time as the first notice, (o).

Special notice on the occupier :—Under section 9 of the L. A. Act the Collector must, in addition to a general notice, serve a notice, on the occupier if any, of the land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested. It is not sufficient for him merely to serve a notice on one of the three brothers each of whom is equally interested under the Act, and the mere fact that one of the three brothers accepts a notice on behalf of the others, does not raise any presumption that he had any authority to do so, (p). It is quite clear that notice is essential to exercise of jurisdiction (q).

Special notice on persons interested :—For, who are 'persons interested', *vide* sec. 3(b) and notes thereunder.

Section 9 does not apply to the case of a decree-holder seeking satisfaction of a decree, but it covers the case of persons who have definite interests in the land acquired. It was held that when land was taken up by Government, public notice was given thereof and notification was made that "claims to compensation for all interests in such land, might be made to him" (Collector), it was open to the decree-holders to put in a claim under this section. Having failed to do so they are not entitled by force of the decree under section 88 of the T. P. Act to attach the amount of compensation awarded by the Collector to the mortgagor (r). The Calcutta High Court, however, dissented from this view, and held, that a decree-holder is entitled to obtain through the Court which granted him the decree, satisfaction of that decree out of the money awarded as compensation on the acquisition of the mortgaged property by Government, that money representing so far as he is concerned, the property which was hypothecated to him as security for the mortgage debt, (s).

Notice of acquisition under S. 9 imperative on the occupier :—Until a notice to treat has been given, unless the omission arises from acquiescence of the owner or from a bonafide mistake on the part of the promoters, or from their inability to serve the same, the promoters do not bring themselves within the protection of the special Act, and are liable to be proceeded against as persons interfering, or threatening to interfere, with private rights. *Cripps (6th Ed.)* p. 67.

Under s. 9(3) L. A. Act, 1894, it is only in the case of an occupier that the failure to serve notice by itself may furnish him with a cause of action by which he could challenge the award. In the case of persons other than the

(o) *Krishna Shah v. The Collector of Bareilly*, 39 All. 534 : 15 A.L.J. 450 : 40, I.C. 76.

(p) *Nitai Dutt v. Secretary of State*, 3 Pat. 454 : 81 I.C. 576 : (1924), A.I.R. (Pat.) 608.

(q) *Maharaja Rameswar Singh v. Secretary of State*, 34 Cal. 470 : 11 C.W.N. 356 : 5 C.L.J. 669.

(r) *Basamal v. Tajammal Hussain*, 16 All. 78.

(s) *Jotoni Choudhuran v. Amar Krishna Shah*, 6 C.L.J. 745 : 13 C.W.N. 350 : 11 C. 164, *vide* also sec. 73 of the Transfer of Property Act,

occupiers who are interested in the land, the mere omission or failure to serve a notice is not sufficient in itself to entitle them to challenge the award but they must establish that the failure to give them such notice was a wilful or perverse or fraudulent failure on the part of the Collector.

In a proper case the Collector might be fixed with constructive notice of the existence of a person who is interested in the land, and if the Collector fails to make proper inquiries with regard to the existence of such a person the court may come to the conclusion that the omission to serve notice was wilful. It is the duty of the Government officers to take proper care that inquiries are made to find out all the persons who are interested in the land which is sought to be acquired and in a proper case the mere fact that the name of a person interested did not appear in the record of rights may not be sufficient to entitle him to make no other enquiry and to proceed with the acquisition without giving any notice under sec. 9(3) of the L. A. Act, 1894 (t).

The Land Acquisition Act evidently contemplates the valid acquisition of land and its absolute vesting in Government after a bonafide award or reference by the Collector has been made and possession has been taken, notwithstanding that persons interested may not have had notice. This is clear from section 9 itself ; for the very provision that persons known or believed to be interested are to have notice, shows that persons interested who are not known or believed to be interested may not have notice and yet the proceedings may go on validly. When it is known or believed that a person is interested and yet the Collector wilfully and perversely refuses to give him notice, then his proceedings cannot be considered *bona fide* and should be held to be colourable and therefore inoperative in vesting the land in the Government as was held in the case of *Luchmeswar Singh v. Chairman, Darbhanga Municipality*, (u), but where through mere inadvertence or mistake a person interested has not had notice served upon him, and the reason for the non-service is rather allied to ignorance of the fact of his being interested than to any wilful perversity, there has been substantial compliance with the provisions of the Act and that there is no sufficient reason for holding that the vesting of the land in the Government under section 16 has not taken place, (v). Under section 16 of the L. A. Act the making of an award and taking possession of land thereunder vest the property absolutely in the Government and the mere fact that notice has not been served on the occupier of the land in accordance with section 9(3) and 45 of the Act does not render the award or subsequent proceedings void nor does it prevent the vesting of the property to Government (w).

(t) *Laxmanrao Kristrao Jahggirdar v. Provincial Government of Bombay*, 52 Bom. L.R. 316.

(u) *Luchmeswar Singh v. Darbhanga Municipality*, 17 I. A. 90 : 18 Cal. 99.

(v) *Ganga Ram Marwari v. Secretary of State*, 30 C. 576.

(w) *Secretary of State v. Quamar Ali*, 16 A.L.J. 669 : 51 I.C. 501. *Kasturi Pillai v. Municipal Council, Erode*, 43 M. 280 : 53, I.C. 646 : 37 M.L.J. 618 : 10 L.W. 366 : 26 M.L.J. 268 ; *Burn & Co. v. Secretary of State for India*, 76 I.C. 579 : (1923), A.I.R. (C) 573. *Jagarnath Prasad v. Municipal Board, Benares*, I.L.R. (1948) All. 529 : 1949, A.L.J. 32 : 1949, A.W.R. 115 ; A.I.R. (1948), All. 446.

Inconsistency in proceedings :—Although the correct position seems to be that nobody should be permitted to take an inconsistent position, or, in other words, adopting and accepting remedies under the L. A. proceedings and at the same time pursuing another remedy under Art. 226 of the Constitution, as has been held in *Tincori Das v. L. A. Collector*, (x), but in a case where a petitioner (1) had no notice under s. 9 of the L. A. Act, so as to enable her to take necessary steps and (2) has not filed any application for reference under s. 18 of the L. A. Act but reserved his right to file such an application in future to save limitation, although he has filed a claim petition under s. 9 of the Act and (3) has not accepted any money as yet and (4) made no undue delay in making the writ petition wherein he has challenged the validity of notice under s. 4 and of declaration under s. 6 of the Act, the petitioner can not be said to have unequivocally expressed an intention to adopt the Land Acquisition proceedings and so can not be said to have adopted an inconsistent attitude, so as to disentitle her to relief under Art. 226 of the Constitution. There is no inconsistency in the position of a person who says that the proceedings under the L. A. Act is invalid in law but if they are held to be valid he is entitled to lawful compensation. This was held in *Hemlata Basu v. State of West Bengal*, (x-1).

Prior notice and rules of natural justice :—Although it is a rule of natural justice that no one should be deprived of his property without prior notice of acquisition or requisition, but if a special Act (in this case West Bengal Land Requisition and Acquisition Act II of 1948) does not provide for such notice, it will not be void or vitiate the proceedings on that ground, as, this rule of natural justice of giving prior notice, can be excluded by a statute expressly or by implication, although the inequality in procedures can be challenged under Art. 14 of the Constitution. This has been held in *Mihir Kumar Sarkar v. State of West Bengal*, (x-2), but it may be noted that this finding is contrary to some previous decisions, (x-3).

Effect of failure to serve notice :—There is no provision requiring the Collector to give notice to the real owner of the land proposed to be compulsorily acquired. Section 9(3) of the L. A. Act does not lay down that if the Collector can not find out the name of the person who is really interested or makes a bonafide mistake, the proceedings are bad or vitiated on that account. When the omission or failure to issue notice on the real owner or occupier is not wilful or perverse, the proceedings can not be held to be void. Non-service of notice under sec. 9(3) does not make the proceedings or the award illegal or void or without jurisdiction. The Collector's right to take possession of the property is consequently not affected. But he would not be bound by the period of limitation provided in cl. (b) of sub-section (2) of section 18, (y).

(x) *Tincori v. L. A. Collector*, 70 C. W. N. 1100.

(x-1) *Hemlata Basu v. State of West Bengal*, 75 C. W. N. 94 (D. B.).

(x-2) *Mihir Kumar Sarkar v. State of West Bengal*, 85 C. W. N. 831 (D. B.).

(x-3) *Durayappa v. Fernando*, (1867) 2 All. E. R. 152 ; *Schmidt v. Secy. of State*, (1969) 2 W. L. R. 962 ; *State of M. P. v. Champalal*, 1962 S. C. A. 59 ; A. I. R. 1965 S. C. 124 ; *Jagannath v. State of Orissa*, (1954) S. C. R. 1046.

(y) *Shivdev Singh v. State of Bihar*, A.I.R. 1963, Pat. 201.

But persons on whom no notice under s. 9 or s. 12(2) have been served, are entitled to maintain a suit for share of compensation money (z).

Notice when defective :—The Statute does not prescribe any form for the notice, but it is clear that it must contain the material facts which would enable the land-owner to identify the land intended to be taken up. The very object of the notice would be defeated if it did not contain a sufficiently accurate description of the property which could inform the parties in interest what land it was proposed to appropriate ; the identification of the thing desired is of the utmost importance ; and if the notice does not describe the property against which it is directed it must be taken to be defective. In the second place, where the statute requires that the notice should give the owner a prescribed time, after the expiry of which claims and objections might be preferred, a notice which fixes a shorter time is in contravention of the statute and is consequently defective. The principle is that no man shall have his rights determined without an opportunity to be heard in their defence, and where a statute prescribes a minimum period which the person affected is to have for submission of his defence, such time cannot be allowed to be reduced (a).

An error as to the date and place in the notice is immaterial where it has not caused any prejudice, (b).

Notice of clear 15 days :—Section 9 of the L. A. Act does not require fifteen clear days' notice of the date fixed. It only provides that the date must not be earlier than 15 days after the service of notice (b). Although in *Birbal v. The Collector of Moradabad*, (c), it was held that the rule requiring an interval of 15 days between the issue of the public notice provided by cl. (2) and the hearing of claims by the Collector does not apply to a personal notice issued under cl. (3), it has been held in *Venkatarama Ayyar v. The Collector of Tanjore* (d), that a public notice under section 9(2) of the L. A. Act requires at least fifteen days' interval between its publication and the time at which claimants to the land are required to state their objections and make their claims. Sec. 9(3) which enacts that the Collector shall also serve notice to the same effect on the occupier and others interested in the land, means that there must be in the case of such personal notices also a similar interval of at least fifteen days between the date of the service of notices and the date when they are required to state their objections and it is only when such interval has been given by the notices under sec. 9(2) and 9(3) that the stringent provisions of sec. 25(2) can be applied (e). It seems that the latter view is correct. A notice under sec. 9 served on the 24th February, 1926, requiring the persons interested to appear on the 4th

(z) *Birendra Nath Banerjee v. Mrityunjoy Roy*, 66 C.W.N. 191.

(a) *Maharaja Rameswar Singh v. Secretary of State*, 34 Cal. 470, 11 C.W.N. 356 : 5 C.L.J. 669 ; *Tara Prosad v. Secretary of State*, 34 C.W.N. 323.

(b) *Gokul Krishna Banerjee v. Secretary of State*, 137, I.C. 116 : 1932 A.I.R. (Pat.) 134.

(c) *Birbal v. Collector of Moradabad*, 49 All. 145.

(d) *Venkatarama Aiyar v. Collector of Tanjore*, 53 Mad. 921 : 60 M.L.J. 410 : 128, I. C. 147, 1930 A.I.R. (M) 836 ;

(e) *Dist. Lab. Officer v. Veeraghanta*, 59 M.L.J. 911 ; 129, I.C. 251 ; 1931, A.I.R. (M) 50.

March 1926 is bad in law as there was no clear fifteen days' notice and the provisions of sec. 9 of the Act not having been strictly followed as regards the service of notice, it was held that it was not possible to apply the penal provisions of sec. 25 of the Act in order to prevent the claimant from putting forward his claim before the judge under the L. A. Act (f). But this case is no authority for the proposition that because no notice was served, all subsequent proceedings become void. It was held in *Tirthalal De v. State of West Bengal* (g), that in the instant case, the declaration was published in Calcutta Gazette on March 5, 1959. The notice under s. 9 of the Act fixed March 18, 1959 for the making of the claim by the petitioner. Between the two dates a period of 15 days, as contemplated in the Act, did not elapse. But this irregularity does not make the acquisition itself bad (h). But it has been held in *Prasanna Kumar Das v. State of Orissa* (i), that a notice fixing the date of hearing within 15 days is defective and the award made in pursuance of such invalid notice is void and illegal contrary to *Mahatta Sukhdev Saran Singh's case*, (h). The conclusion seems to be that (1) a notice must give at least clear 15 days time to put in a claim etc., (2) if not so done, the notice is illegal, (3) but that does not in itself vitiate the subsequent proceedings or the award, because the claimant can put his claim at any time before the award, (4) if the claimant had neither notice nor any knowledge of proceedings and if there is any *mala fide* on the part of the Collector, then his claim is not affected even if there is an award and the proceedings may be held bad. His right in any case is not affected under s. 31 to be established by regular suit if necessary, (j). (5) but if he had any knowledge then complaint of not receiving notice will not be a ground for challenging the proceedings. See notes under heading "effect of omission to claim in due time."

Mode of service of the notice :—According to English law (sec. 19 of the Lands Clauses Act, 1845) all notices must be served either personally or left at the last known place of abode of the party interested, if any such person, can after diligent search be found, (k). A notice left with the party's landlord at the party's office, and not communicated to the party was not properly served. In *Shepherd v. Corporation of Norwich* (l), the conditions necessary for service of a notice to treat were discussed, and North, J., referring to the service on an agent who had authority to accept service said: "An agent or solicitor might have such authority, but there must be something to show that he had and even if I had come to the conclusion that there was such authority, it seems to me that an authorised agent is not a person upon whom service under the Act of a notice to treat can be effected so as to bind

(f) *Tara Prosad v. Secretary of State*, 34 C.W.N. 323.

(g) *Tirthalal De v. State of West Bengal*, 66 C.W.N. 115.

(h) *Mahatta Sukhdev Saran Singh v. Raja Nripendra Narayan*, 76, C.L.J. 431 and *Naba Kumar Seal v. State of West Bengal*, A.I.R. 1952, Cal. 870.

(i) *Prasanna Kumar Das v. State of Orissa*, I.L.R. (1956), Cal. 443 : A.I.R. 1956, Orissa 114.

(j) *Saibesh Chandra Sarkar v. Sir Bejoy Chand Mahatab*, 26 C.W.N. 506 : 65, I.C. 711.

(k) *R. v. Great Northern Railway Co.*, 2 Q.B.D. 151.

(l) *Shepherd v. Norwich Corporation*, 30 C.D. 553.

the principal of that agent." If such party shall be absent from the United Kingdom or can not be found, the notice may be left with the occupier of the lands. Before the notice, however, can be considered properly served by the same being left with the occupier of the land, enquiry must be made as to the whereabouts of the party entitled to the notice and if a notice is left with the occupier of part of the premises and no attempt is made to serve the party interested, the notice will not be considered as properly served (f). If there is no occupier, the notice must be affixed in some conspicuous part of the land.

Under Section 45, service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the judge. Whenever it may be practicable, the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him and if no such adult male member can be found, on his servant (m), but, if no one is found the notice may be served by fixing a copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof on some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court house, and only on some conspicuous part of the land to be acquired ; provided that if the Collector or judge so directs a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Chapter VI of the Indian Post Office Act, VI of 1898 and service of it may be proved by the production of the addressee's receipt.

The notice may be served either by registered post or by personal service. Personal service of notice or delivery of the notice to an agent would be good service or delivery to the principal, though in fact, the notice was destroyed by the agent and never seen or heard of by the principal. It was an entire mistake to suppose that the addressee must sign the receipt for the registered letter himself or that he cannot do so by the hand of another person or that if another does sign it on the addressee's behalf the presumption is that it never was delivered to the addressee himself, immediately or mediately. In *Harihar Banerjee v. Ram Sashi Rai* (n), the Privy Council held that, if a letter properly directed containing a notice is proved to have been put into the post office it is presumed that the letter reached its destination according to the regular course of business and was received by the person to whom it was addressed. That presumption would apply with greater force to registered letters. "In *Girish Chandra Ghose v. Kishori Mohan Das*, (o), a notice was given by registered post, but the letter containing the notice was returned by the post office, the addressee having refused to accept it. It was held that under section 114 of the Evidence Act the Court was

(m) *Secretary of State v. Tikka Jagtar*, 1936, A.I.R. (L) 733 ; *A.P.S. Karupiah Nadar v. Special Dy. Collector*, A.I.R. 1955 Mad. 406 ; *Subramania Chettiar v. State of Madras*, A.I.R. 1953, Mad. 493.

(n) *Harihar Banerjee v. Ram Sashi Ray*, 45 I.A. 222 ; 23 C.W.N. 77 : 29 C.L.J. 117.

(o) *Girish Chandra Ghosh v. Kishori Mohan Das*, 23 C.W.N. 319.

entitled to presume that the letter containing the notice reached the defendant and the fact that the letter was returned by the post office as not accepted by the addressee did not destroy the presumption." A notice under section 9 of the L. A. Act may be validly served by sending by registered post to the person concerned if the Collector or judge so directs under section 45 of the Act, (p).

On general principles, a notice which is addressed to all the joint claimants and served on some of them should be regarded as good service as against the persons not personally served. Reference may be made in this connection to the decision of their Lordships of the Judicial Committee in the case of *Harihar Banerjee v. Ram Sashi Rai*, *supra*. That was no doubt a case of service of a notice to quit which was addressed to several joint tenants which was accepted by some of them. In those circumstances Their Lordships laid down: "That in the case of joint tenants, each is intended to be bound, and it has long ago been decided that a service of a notice to quit upon one joint tenant is *prima facie* evidence that it has reached the other tenants." (q).

Effect of service of notice :—In *Tiverton & North Devon Railway Co. v. Loosemore*, (r), it was stated by Lord Blackburn that the effect of giving a notice to treat was to create a relation between the promoters and the owner analogous to that of purchaser and vendor, but the price was not yet ascertained. Until that was done, the land still remained the property of the owner, in equity as well as at law, but the acquiring party had a right to have the price ascertained, and for that purpose to summon a jury, and then, when the price was ascertained, on tender of that to have the land conveyed to them, or, if the landowner could not or would not make a title, to deposit the price ascertained in the bank, and execute a statutory conveyance, on which the lands vested absolutely in the promoters of the undertaking.

Remedy when notices unserved :—It should be noted that there may be (1) cases in which a person interested may not have any notice whatsoever of the L. A. proceedings, and (2) cases in which a person interested has knowledge of the L. A. proceedings though no notice under section 9 was served upon him and he abstains from taking any steps in the L. A. proceedings, not having been served with any notice. In cases coming under (1) i. e., in which a person interested has no knowledge whatsoever of the proceedings of acquisition, section 31 provides that nothing contained in the L. A. Act shall affect the liability of any person, who may receive the whole or any part of the compensation awarded under this Act, to pay the same to the person lawfully entitled thereon i. e., by regular suit, (s).

Collector's failure, when it is not wilful or perverse to serve notice of intended acquisition on the occupier or the owner as required by s. 9(3) and in the manner laid down in s. 4, does not make the subsequent proceedings

(p) *Ranchhodlalji v. Acquisition Officer, Ahmedabad*, 46 Bom. L.R. 696.

(q) *Prasanna Kumar Dutta v. Secretary of State*, 38 C.W.N. 239.

(r) *Tiverton & North Devon Ry. v. Loosemore*, L. R. 9, A. C. 480.

(s) *Saibesh Chandra Sarkar v. Sir Bejoy Chand Mahtab*, 26 C.W.N. 506; 65 I.C. 711,

Vide notes under s. 31.

void (t). The failure to issue the notice under section 9(3) of the L. A. Act does not render the subsequent proceedings null and void, (u). With regard to cases coming under cl. (2) in which a person interested has knowledge of the L. A. proceedings, though not served with notices, it has been laid down that there has been wilful negligence on the part of the claimant in not putting forward his claim before the Collector though he was aware of the proceedings and that he has no remedy against the Government (v). When a person interested in the property sought to be acquired, has had sufficient notice of the intended acquisition, he can not make the absence of a special notice to him a ground of complaint. But persons who had no notice under s. 9 or s. 12(2) can maintain a suit for share of compensation money (w). He can also maintain a writ proceeding, (w-1).

Waiver of notice :—Where a Collector has omitted to take some steps which is essential to the validity of the proceedings, a waiver of the defect by the owner has to be clearly established and it must be shown that the owner acted with full knowledge of all the facts. There can, however, be no waiver where the owner appears and expressly reserves his legal rights.

Remedy by suit when proceedings defective :—When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special court for the investigation of matter which may possibly be in controversy, such jurisdiction is exclusive and cannot concurrently be exercised by the ordinary Courts. The same view has been adopted by a Full Bench of the Calcutta High Court (y), where it was laid down that if the legislature creates an obligation to be enforced in a specific manner, as a general rule, performance cannot be enforced in any other way. It is well settled, however that even where a specific remedy is provided by a statute, it is necessary in order to remit the owner to such remedy, and exclude his remedy by suit, that the party acquiring the property should have substantially complied with its requirements and where the proceedings for acquisition are not perfected and completed, they will not debar the remedy by a regular suit. The essence of the matter is that the party has his remedy before the special Court. When, however, the party has not been able to put forward his claim by reason of defects or irregularities in the proceedings, or when the claim has been put forward but not adjudged, the jurisdiction of the civil court cannot be treated as superseded. Whether the claim be regarded as one under the Land Acquisition Act or under the Railways Act, if there was a refusal on the part of the Collector to adjudicate upon it, the plaintiff

(t) *Rahimbux v. Secretary of State*, 32 A.I.R. 8 : 173 I.C. 100 : 1938, A.I.R.(S) 100.

(u) *Mahatta Sukhdev Saran Singh v. Raja Nripendranarayan*, 76 C.L.J. 430.

(v) *Gangaram Marwari v. Secretary of State*, 30 Cal. 576.

(w) *Birendra Nath Banerjee v. Mrityunjoy Roy*, 66 C.W.N. 191 : *Secretary of State v. Karim Bux*, 1939, A.L.J. 85 ; 1939, A.I.R. All. 130 ; *Tirtha Lal De v. State of West Bengal*, 66 C.W.N. 115 : *Maharaja Rameswar Singh v. Secretary of State*, 34 Cal. 470 : 11 C.W.N. 356

(w-1) *Hemlata Basu v. State of West Bengal*, 75 C.W.N. 94.

(x) *Bhandi Singh v. Ramadhin Roy*, 2 C.L.J. 359 & 20n : 10 C.W.N. 991.

(y) *Collector of Pabna v. Ramnath Tagore*, (1867) B.L.R. (Sup.), (F.B.) 630.

has the remedy by a suit in the Civil Court (z). If the provisions of the L. A. Act are not strictly complied with but are made a cloak for attempting to obtain a transfer of an indefeasible title under the guise of a public purpose the proceedings do not operate towards the creation of a valid title to the land in Government (a). A party not receiving a notice, and filing his claims later but not accepting award, is also entitled to challenge the validity of the notice or the proceeding in a writ petition, (a-1).

It cannot be suggested that the Collector should never be held liable to pay out the money again when he has once paid it out to wrong person. There may be cases in which he has shown such negligence that he could rightly be held liable for the loss by a claimant of money which the courts subsequently hold should have been paid to him. But to decide whether a Collector should be so liable would involve a Court in an enquiry into the procedure adopted by him and a finding that at least there had been some negligence or serious error on his part. There is nothing in the L. A. Act to suggest that such an enquiry should be held on a reference under the provisions of sec. 18 of the Act. A question of that sort is one which can only be decided satisfactorily in a separate suit (b).

Statement of claim—what it should contain—No court fee required :— Sec. 5 sub-sec. (2) of the Lands Clauses Act, 1845 enacts that the notice of claim must state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts claimed under separate headings and showing how the amounts claimed under each head is calculated, not merely the lump sum claimed in respect of the land taken, but details of each item. On receipt of the notices the parties should file their claims with as little delay as possible and also the statements called for in the special notices. No Court-fees are required upon claims under section 9 of Act VII of 1870. The claim should contain the following particulars ; (1) the name of the claimant and share in the land acquired, (2) names of co-sharers and their shares, if any, (3) abstract of title, i. e., whether inherited or purchased when and from whom and for what amount, (4) details of any mortgage or charge on the land, if any, (5) rent or profits derived from the land for the past three years, (6) whether competent to alienate the land by voluntary sale, (7) total amount claimed under separate heads e. g., for land, structures, trees, crops, severance, loss of earnings, damages for removal, etc., (8) whether the area given in the notice is accepted or not.

In all ordinary circumstances a claimant can and should present his case fully before the Collector and should be held bound throughout the proceedings by what may be termed his pleadings. It would not be open to him to make out a fresh case whether by way of supplementary claims to

(z) *Maharaja Sir Rameswar Singh v. Secretary of State*, 34 C. 470, 11 C.W.N. 356 : 5 C.L.J. 669.

(a) *Ponnala v. Secretary of State*, 97 I.C. 471 : (1926), A.I.R. (M), 1099.

(a-1) *Hemlata Basu v. State of W. B.* 75 C.W.N. 94 (D.B.).

(b) *K.N.K.R.M. K. Chettyar Firm v. Secretary of State*, 11 Rang. 344 : 1933 A.I.R. (Rang.) 176.

compensation or otherwise. A claimant put in a claim before the Collector for compensation made up of the value of land, trees and some walls, etc. A reference was made by the Collector in respect of the value thereof and before the Court, the claimant supplemented it by adopting two new items viz., construction of new walls and cost of erecting walls. It was held that the Court had no power of entertaining such newly preferred claim, (c).

Claim to be specific :—A claim under sec. 9(2) of the Act must be a specific claim, that is, a claim which states specifically the amount claimed. The mere filing of sale deeds showing the price for which the adjoining properties were sold is not, therefore, a claim within the meaning of the said section. Where a claimant merely files such sale deeds without filing a claim, the Collector may accept them and appreciate the evidence which they afford and he cannot, merely because he did so, be held to have waived the necessity for filing a claim, (d). All that sec. 9 requires is that the person claiming an interest in the land under acquisition should (1) specify the interest he claims, (2) specify the amount he claims for such interest and (3) give particulars of his claim to compensation. It does not go further than that, and does not require him to specify the amount of compensation he claims in respect of each of the sub-heads referred to in sec. 23 of the Act. A failure therefore to specify the amount claimed in respect of any particular sub-heads of sec. 23 is no bar to the judge revising the award of the L. A. Officer in respect of such sub-head, (e).

Statement to be in writing and signed :—The statement of claim filed before the Collector as required by section 9(2) and (3) must be in writing and must be signed by the party making it but does not require any verification because the expression "court" in the L. A. Act does not include a Collector nor is there any authority given to the Collector to administer an oath or to require a verification. The Deputy Collector acting under the L. A. Act is not a judicial officer, he cannot be properly regarded as a Revenue Court within the terms of section 476 of the Code of Criminal Procedure, his proceedings under the former Act are not regulated by the Code of Civil Procedure, nor is he right in requiring a petition put in before him to be verified in accordance with that Code, (f). A reference to Cl. (2) of section 9 shows that the clause permits the Collector to require any oral statement to be made in writing and signed by the party or his agent. Merely placing an uncertified copy of a sale deed before the Collector is not sufficient compliance with the provisions of section 9, (g).

Exaggeration or over-estimate of the value :—In proceedings under the L. A. Act what may be found to be an exaggeration or over-estimate of the value of the land cannot properly constitute a false statement which would

(c) *Secretary of State v. C. R. Subramani Ayyar*, 59 M.L.J. 30 : 127 I.C. 1930 A.I.R. (M) 576.

(d) *Chigurupati Subbanna v. District Labour Officer, East Godavari*, 53 Mad. 533 : 59 M.L.J. 33 : 127 I.C. 300 : 1930 A.I.R. (M) 618.

(e) *Secretary of State v. F. E. Dinshaw*, 1933 A.I.R. (S) 21.

(f) *Durga Raskhit v. Queen Empress*, 27 Cal. 820.

(g) *Gyanendra v. Secretary of State*, 25 C.W.N. 71 ; *Orient Bank v. Secretary of State*, 7, L. 416 : 94 I.C. 245 : (1926) A.I.R. (L) 401.

demand prosecution for perjury, and the fact that some years before, the land was offered for a much lower price, is no sufficient ground for imputing such an offence, (h).

Effect of omission to claim :—Sec. 5 sub-sec. (2) of the Lands Clauses Act, 1845, provides that if the Official arbitrator is satisfied that a claimant has failed to deliver to the acquiring authority a notice in writing of the amount claimed by him giving sufficient particulars and in sufficient time to enable the acquiring authority to make a proper offer, the question is to costs is to be dealt with as if an unconditional offer had been made by the acquiring authority at the time, when, in the opinion of the official arbitrator, sufficient particulars should have been furnished, and the claimant had been awarded a sum not exceeding such offer. It is intended by section 9(2) of the L. A. Act that the owner of the property about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, reasonable and proper award based upon a proper enquiry after the proper means have been placed before him for holding such enquiry. Section 25(2) makes the refusal or omission to comply with the provision of section 9(2) without sufficient cause, an absolute bar to obtaining of a greater sum than that awarded by the Collector (i). The facts that there had been previous negotiations between the Government and the persons whose lands Government wished to acquire and that the Government was aware of the price which the owner had asked for the land, would not afford a sufficient reason for the owner omitting to put in any claim under section 9 of the L. A. Act I of 1894, nor relieve the owner from the consequences of such omission as set forth in section 25, (j). If after notice duly issued under sec. 9(2) no claim is made before the Collector and no cause shown for the omission to make a claim, the District Judge on a reference made to him cannot award any larger amount than that awarded by the Collector (k). In L. A. cases persons deliberately omitting to claim the property to be acquired are ordinarily estopped from afterwards asserting their rights before the civil court, (l). When the appellant omits to claim within the meaning of section 9 the District Judge is justified in refusing to award anything more than the amount awarded by the Collector, (m). Under sec. 9 a claimant must give particulars of his claim, and if an item is not specified, merely because the amount awarded does not exceed the total amount claimed, he will not be awarded compensation on that score, (n). Where a claimant fails to mention the amount of his claims in the memo filed by him before the Collector in pursuance of the notice issued to him under sec. 9 of the L. A. Act, it is wrong to say that it is the duty of

(h) *Durga Rakshit v. Queen Empress*, 27 Cal. 820.

(i) *Secretary of State v. Bishan Dat*, 33 All. 376 : 8 A.L.J. 115 : 9, I.C. 423.

(j) *Narain Dat v. The Superintendent, Dehra Dun*, 37 All. 69.

(k) *Birbal v. The Collector of Moradabad*, 49 All. 145 : 98 I.C. 806.

(l) *Haji Umar Din v. Khairdin*, 138 P.W.R. 1909.

(m) *Ramprosad v. Collector of Aligarh*, 40 I.C. 274.

(n) *Secretary of State v. Tikka Jagtar Singh*, 1936, A.I.R. (L) 733.

the Revenue Divisional Officer to draw the claimant's attention to the omission and require him to supply it. There is no provision anywhere in the Act, casting any such obligation on that officer, (o). A claim for damages for severance cannot be entertained by the civil court unless it was originally made before the Collector, (p). High Court is competent to deal with reason given for failure to file claim under s. 9, (q).

Effect of omission to claim in due time :—When a claimant appears before the Collector but not on the date fixed in the notice, it cannot be said that he is not entitled to file any claim before the Collector. The cases of *Secretary of State v. Gobind Lal Bysack*, (r), and *Secretary of State v. Bishan Dat*, (s), are distinguished, for in those cases the objector never appeared or made any claim prior to the award. It cannot be said that the claimant omitted to make a claim pursuant to the notice under section 9 merely because he did not make it by the date originally fixed in the notice. Proceedings before the Collector were adjourned from time to time, and that the claim, if any made before the award, was a claim pursuant to the notice under section 9(2) of the Act, (t). Where the claimants did not put in their claims at the time required by the notice under section 9, but did so later, the amount which the court can award is governed by sec. 25(1), i.e., the court is not precluded from awarding a larger sum than what the Collector has awarded, (u). A person interested has got the right to claim even when steps are taken under s. 31, that is why even if no notices are served, subsequent proceedings do not become void, (v).

(Also see notes under heading "claim valid though late" under s. 14 *supra*.)

Amendment of claim :—A claimant is not restricted to the different valuations for the different items in his petition of reference, although he might be held limited to the amount claimed for the entire property in the said petition. The words "at least" appearing in the headings of claim means that minimum claim was made in respect of said item (w).

So an amendment of claim of particular items may be made without increasing the total amount even in a reference proceedings.

(o) *Revenue Divisional Officer, Tanjore v. Venkatarama Iyer*, (1949) M.W.N. 575 : (1949) 2 M.L.J. 245.

(p) *Umar Baksha v. The Secretary of State*, 46 I.C. 906.

(q) *State of Bihar v. Bhagwan Shah*, A.I.R. 1964 Pat. 484.

(r) *Secretary of State v. Gobindlal Bysack*, 12 C.W.N. 263.

(s) *Secretary of State v. Bishan Dat*, 33 A. 376 : 8 A.L.J. 115 : 9, I.C. 423.

(t) *Secretary of State v. Sohanlal*, 44 Ind. Cas. 883.

(u) *Land Acquisition Officer v. Fakir Mahomed*, 143 I. C. 699 : 1933 A. I. R. (S) 24.

(v) *Sukhdev Saran Singh v. Raja Nripendra Narayan*, 76 C.L.J. 430.

(w) *Charu Prokash Ghosh v. State of West Bengal*, I.L.R. 1967 (2) Cal. 1, Cases referred to : *Province of Bengal v. Ram Chandra Bhotica*, A.I.R. 1944, Cal. 247 ; *Province of Bengal v. P. L. Nun*, A.I.R. 1945 Cal. 312 ; *Pramatha Nath Mullick v. Secretary of State*, (1930) A. I. R. (P. C.) 64 : 57 I. A. 100 ; *Raja Vyricharia Narayan v. Rev. Div. Officer* (1939), L. R. 66, I. A. 104.

Power to require and enforce the making of statements as to names and interests

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of the sections 175 and 176 of Indian Penal Code. (45 of 1860).

State Amendments

Mysore.—*The Land Acquisition (Mysore Extension and Amendment) Act 17 of 1960* :—

“13. Amendment of section 10 of Central Act 1 of 1894 :—In sub-section (1) of section 10 of the principal Act for the words ‘may also require’ the words “may also by notice require” shall be *substituted*.”

Notes

Sec. 10 of Act X of 1870 ran as follows :—

“The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code”.

Notice under section 10 :—The issue of a notice under section 10 requiring any person to make a statement containing the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise is discretionary and not compulsory as a notice under section 9.

Information regarding persons interested :—The L. A. Act contemplates two separate and distinct forms of procedure, one for fixing the amount of compensation described as being an award and the other for determining

in case of dispute the relative rights of the persons. Though the word "owner" is not defined in the Act, an owner must be deemed to be one of the persons interested in the land to be acquired [section 3(b)]. A proprietor, sub-proprietor, mortgagee, tenant or sub-tenant are all owners for the purposes of section 49, (x). "It is not always necessary or even desirable, to treat the whole land covered by declaration as a single case. The land may ordinarily be divided into separate portions or plots and separate proceedings may be held as regards each plot, provided only that the basis of division be land and land alone. It is not permissible to divide off the separate interests in a particular plot and treat each as a separate case. The general practice should be to split up block or land covered by the declaration into a number of separate and distinct plots, each plot or group of plots representing not a separate interest but a separate claim. There is a wide difference between a separate interest and a separate claim. A may be interested in a piece of land as a Zamindar, B as putnidar, C as an under-tenant, but the three interests of A, B, C, make up only one claim. The point for enquiry is the whole value of the land, though that value may be divisible among several persons." *Boards' Instructions*, 52(1); *Bengal L. A. Manual*, 1910 p. 71.

Rents and Royalties :—"Rent is a profit, certain in nature, arising from the thing itself but not part of the demised thing."

Royalty is a mining lease and signifies that part of the *reddendum* which is variable and depend upon the quantity of mineral gotten. Royalty is not equivalent to rent, (y).

Rents and profits for three preceding years :—The object of sn. 10(1) is to enable the Collector to have an estimate of the rents and profits ordinarily received or receivable from the property in question in order that he may be able fairly to assess a compensation. It is not possible to assess that claim for compensation on the rents and profits for one year only. Three years is the period taken in Government estimates, hence a statement for 3 years was considered as fair. *Proceedings in Council*.

Non-compliance with the notice :—Every person required to make or deliver a statement, either under section 10 or section 9, shall be deemed to be legally bound to do so and is made criminally liable for default under sections 175 and 176 of the Indian Penal Code. It will be noticed that notices under section 10 being only for information regarding the lands to be acquired as regards the several interests on the same and not for any claim, there is no civil liability for non-compliance with the terms of the notice as in case of section 9. *Vide sections 9 and 25 and notes thereunder*.

Furnishing false information :—There is no provision that any person making a false statement before a Collector would be liable for giving false testimony. The only liability is for disobedience of orders, (z). Any person required by the Collector to make a statement of the profits derived from the

(x) *Krishna Das v. Collector of Pabna*, 16 C.L.J. 165.

(y) *Bihar Mines Ltd. v. Union of India*, 1967 (2) S.C.A.I. *Sone Valley Portland Cement Co. Ltd., v. The General Mining Syndicate Ltd.*, I.L.R. 1967 (2) Cal. 450.

(z) *Ezra v. Secretary of State*, 30 Cal. 36 : 7 C.W.N. 249.

land and of the persons interested in it is liable to be punished under the Penal Code if he does not do so. A dishonestly false statement in a claim would be punishable under section 177 of the Indian Penal Code. This would obviously not apply when there is exaggeration or over-statement, though parties would do well to avoid these. Very little use is made of these penal sections and the Collector should not apply them except in a most exceptional case (a). *Peterson, page 11, Para 15.*

There is no provision that any person making a false statement before a Collector would make himself liable for giving false testimony. The only liability is for a disobedience of orders. The fact that s. 177 of the Indian Penal Code, is not mentioned in s. 10(2) indicates that the Collector cannot start a prosecution for giving false information.

Enquiry into Measurements, Value and Claims and Award by the Collector.

Enquiry and award by Collector

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land¹ [at the date of the publication of the notification under section 4, sub-section (1)] and into the respective interests of the persons claiming the compensation and shall make an award under his hand of

- (i) the true area of the land ;
- (ii) the compensation which in his opinion should be allowed for the land ; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

State Amendments

(1) Maharashtra—

- (a) *Bombay Act XVII of 1960, sec. 2, which has been repealed by Maharashtra Act XXXVIII of 1964, sec. 2.*

[See under Part III, Chapter IV—A, Maharashtra (1)].

(a) *Durga Das Rakshit v. Umesh Chandra Sen*, 27 Cal. 985.

¹ These words and figures were inserted by s. 5 of the Land Acquisition (Amendment) Act, 1923, (38 of 1923).

(b) *Bombay Act XXXV of 1953, sec. 3 :—*

To section 11 of the said Act the following proviso shall be added, namely :—

Provided that no such award shall be made by the Collector without the previous approval of the State Government or such officer as the State Government may appoint in this behalf.

(c) *Bombay Act XII of 1958, sec. 2 :—*

In section 11 of the Land Acquisition Act 1894 (1 of 1894) in the proviso thereto, for the words “no such award” the words “no award allowing compensation exceeding such amount as the State Government may by general order specify” shall be substituted.

(d) *Bombay Act VIII of 1958, S. 3 :—*

“(3) To the proviso of Section 11 add the following namely :

“Save that the power of such approval shall be exercisable by the Commissioner in lieu of the State Government where an award not exceeding one lakh of rupees is made to fix compensation under the provisions of the Bombay Taluqdari Tenure Abolition Act, 1949, the Bombay Personal Inams Abolition Act 1952, The Bombay Merged Territories (Baroda Mulgirus Tenure Abolition) Act, 1953, The Bombay Merged Territories and Areas (Jagirs Abolition) Act 1953 and the Bombay Merged Territories (Miscellaneous) Alienations Abolition Act 1955.”

(2) *Andhra Pradesh—By Act XXXII of 1956 S. 3 :—*

[See under Part III, Chapter 1, Andhra Pradesh (2)].

(3) *Calcutta (Improvement)—By Bengal Act V of 1911 as amended by Bengal Act 32 of 1955 s. 74.*

[See under Part III, Chapter XV, W. B. (2)].

(4) *Howrah (Improvement)—By Bengal Act XIV of 1956.*

[See under Part III, Chapter XV, W. B. (3)].

(5) *Nagpur (City)—By Nagpur Improvement Trust Act XXXVI of 1936.*

[See under Part III, Chapter VIII, Madhya Pradesh (4)].

(6) *Punjab—By Punjab Act IV of 1922, S. 59.*

[See under Part III, Chapter XII, Punjab (4)].

(7) *Gujarat—By Gujarat Act 20 of 1965.*

[See under Part III, Chapter IV-B, Gujarat (2)].

(8) *Jubbulpore—By C. P. & Berar Act III of 1950. S. 293, Sch. 1, Para 2.*

[See under Part III, Chapter VIII, M. P. (10)].

(9) *Madhya Pradesh—By C. P. Act II of 1922, S. 239.*

[See under Part III, Chapter VIII, M. P. (3)].

(10) *Mysore—By Mysore Act 17 of 1961.*

[See under Part III, Chapter X, Mysore].

(11) *Uttar Pradesh—By U. P. Act II of 1959, S. 376, Sch. II, Para 3.*

“The full stop at the end of s. 11 shall be deemed to be changed to a semi colon and the following” shall be deemed to be added, namely :

“and

(IV) the costs which in his opinion, should be allowed to any person who is found to be entitled to compensation and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of

Section 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

The Collector may disallow, wholly or in part costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant".

Notes

Section 11 of Act X of 1870 ran as follows :—"11. On the day so fixed, the Collector shall proceed to enquire summarily into the value of the land and to determine the amount of compensation which in his opinion should be allowed therefor and shall tender such amount to the persons interested who have attended in pursuance of the notice.

For the purpose of such enquiry, the Collector shall have power to summon and enforce the attendance of witnesses and to compel, the production of documents by the same means and (as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure."

Amendment :—The words "at the date of the publication of the notification under section 4(1)" have been inserted by section 5 of the L. A. (Amendment) Act XXXVIII of 1923 after the words "the value of the land". The object of this amendment was (1)-to restrict the scope of the enquiry to the determination of the valuation at the date of the publication of the notification under section 4(1) of the Act. Section 23(1) at first provided that in determining the amount of compensation to be awarded for land acquired under the Act the Court shall take into consideration the market value of the land at the date of the publication of the declaration relating thereto under section 6 which has now been altered by Act XXXVIII of 1923 to the date of the publication of notification under section 4, sub-section (1). Sales after the date of notification are discarded in as much as the value of land is more or less affected by circumstances which have arisen after that date (a).

Proceedings before the Collector : Enquiry by Collector :—On receipt of the statements of claims of persons interested the Collector shall enquire (a) into the objections (if any) as to the measurements of the lands to be acquired, (b) into the value of the land at the date of the publication of the notification under section 4(1), and (c) into the respective interests of the persons claiming the compensation money. The proceedings are merely of an administrative nature and it is not incumbent upon the Collector to give any notice with regard to the enquiry to any claimant, (b). Nor is it necessary for him to give a notice to the persons interested to be present at the time when the award is to be given (c).

(a) *Government of Bombay v. Karim Tar Mahomed*, 33, B. 325,

(b) *Jehangir Bopnani v. C. D. Gaekwad*, A. I. R. 1954 Bom. 419.

(c) *Nadu Chand Mallick v. The State of West Bengal*, A. I. R. 1952 Cal. 67.

Interference by higher Authorities :—Under s. 11 of the L. A. Act, it is the Collector who makes the award. The award is to be of such a sum by way of compensation as in the opinion of the Collector and of no other person, is a fair and proper estimate of the compensation, that should be allowed for the land. In making the award the Collector is not acting as a judicial officer and therefore he is at liberty and bound to take into account all available information for the purpose of framing a true estimate of the compensation that ought to be awarded. It is open to Government or any other body or person to give information to the Collector to prepare a preliminary estimate and to report to the prescribed authority his *prima facie* view of the correct amount to be awarded. If the Government is of opinion that the amount of the proposed award is too great, it may under s. 48 withdraw from the acquisition except when possession has been taken and provided the estimate is preliminary and the authorities can lay before the Collector any further information in their possession regarding the proper value of the property. But it is both improper and *ultra vires* for a superior executive officer to issue instruction to the Collector as to the matters which he should take into account in lessening the compensation, or to require the Collector to re-examine the case in the light of such "instructions" when received, (d). For the purpose of the Act the "Special Officer" is the Collector and there is nothing in the Act allowing any other authority to usurp his function. The awards of the special officer appointed for the acquisition are the only awards made under the Act and if the Deputy Commissioner issues any instruction, intended to vary these awards, the action is *ultra vires* and his instructions are irrelevant to the proceedings. Where a Revenue Circular issued by a Revenue Commissioner directed that the Dy. Commissioner might require all cases to be referred to him before an award was given whether it was proposed to exceed the original estimate or not, and the special officer should make his final award according to the instructions received from the Dy. Commissioner, the circular is repugnant to the Act itself and is invalid, (e).

Award :—The offer by the promoters is known in England as the "sealed offer" of the promoters. Under the Old Act of 1870 the Collector could make no award unless there was an agreement as to compensation. S. 14 of the old Act laid down "If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same, such award shall be filed in this Collector's Office and shall be conclusive evidence as between the Collector and the persons interested of the value of the land and the amount of compensation allowed for the same." The award shall be of (i) the true area of the land, (ii) of the compensation which, in his opinion should be allowed for the land, (iii) of the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom

(d) *Katheason Chettyar v. Special Collector of Twanti*, 14 R. 209 ;

(e) *Sujan Singh v. Secretary of State*, 1936 A. I. R. (Pesh) 217 ; *Lt. Governor of Himachal Pradesh v. Sri Avinash Sharma*, A. I. R. 1970 S. C. 1576.

or of whose claims, he has information, whether or not they have respectively appeared before him, (f). Under sec. 11 of the L. A. Act it is the duty of the Collector to make an award in regard to three matters, viz., (i) the area of the land included in the award; (ii) the total compensation to be allowed for the land, (iii) the apportionment of that compensation among all the persons interested in the land. Any one piece of land forming part of a whole in which more than one person has an interest for which he can claim compensation ought not to be made the subject of more than one award. Each award should contain within its four corners the fixing of the value of the land with which it deals, and the apportionment of that value between the various persons interested in the land. But under proper circumstances, if there are two awards in respect of the same piece of land, they may be read together and treated as one (g). In a land acquisition case the true test of determining the amount of compensation which ought to be awarded to the proprietors is to ascertain the market value of the land. The land to be acquired is to be valued at the first instance including all interests and the amount so ascertained has then to be apportioned amongst the parties interested according to their interests, (h). In ascertaining the value of land under the L. A. Act the first thing has to be ascertained is the value of the land as a whole and in an ordinary case the value of the land would be determined without valuing interests which are difficult to define separately and without having to answer questions as between landlord and tenant as to the exact extent of their respective rights. The method of finding out the different interests and valuing each separately and adding the values together is a highly improper method unless it is quite clear what the respective rights of the different parties are and unless the evidence affords instances of dealings in exactly the same rights as are in question. The question of rights of tenants against the landlords must be fought out between themselves and not between the tenants and the Secy. of State and the public purse should not be made to bear the burden of ascertaining what those rights are and paying for those rights separately, (i).

Enquiry by the Collector not judicial :—The L. A. Collector, as has been seen, acts as the agent of Government for the purposes of acquisition and is in no sense of the term a judicial officer nor is the proceeding before him a judicial proceeding, (j). His enquiry and his valuations are departmental in their character and made for the purpose of enabling the Government to make a tender through him to the persons interested. Therefore, the fact that in such a proceeding the Collector did not sufficiently consider the evidence produced by the owner of the land and that he formed his opinion on materials which were not before him as evidence, would not render the

(f) *In re Pestonji Jhangir*, 37 Bom 76; 14 Bom L. R. 507; 15 I. C 771.

(g) *Prag Narayan v. Collector of Agra*, 59 I. A. 155; 54 All. 285; 36 C.W.N. 579; 55 C.L.J. 318; 34 Bom. L. R. 885; 1932. A.L.J. 741; 136 I. C. 449; 1932 A. I. R. (P. C.) 102.

(h) *Collector of Dacca v. Asraf Ali*, 56 C.L.J. 558; 143 I.C. 367; 1933 A.I.R. (C) 312.

(i) *Collector of Jalpaiguri v. Jalpaiguri Tea Coy.* 58 Cal. 1345; 135 I. C. 438; 1932, A. I. R. (C) 143.

(j) *Durgadas Rakshit v. Queen Empress*, 27 Cal. 820,

proceedings improper. If the owner doubted the correctness of the valuations his remedy lay in demanding a reference to a civil court under section 18 of the Act, (k).

In *Ezra's Case* their Lordships held that with regard to the second enquiry directed by the Act as to the value of the land taken thereunder the duty of the Collector under the section relating thereto is to fix the sum which in his best judgement is the value. His proceedings are administrative and not judicial and his award, though conclusive against the Government, is subject to the land-owner's right to have the matter referred to the court. The mere fact that the Collector in making the award availed himself of information supplied to him without the knowledge of the owner and not disclosed at the enquiry before him would not in the absence of fraud or corruption vitiate the proceeding.

The procedure for enquiry was contained in sections 11-13 of the old L. A. Act X of 1870. On a day fixed, the Collector, who after the declaration was by section 7, to take order for the acquisition of the land, was to proceed to enquire summarily into the value of the land and to determine the amount of compensation which in his opinion, should be allowed for it, and to tender such amount to the persons interested, (l).

Enquiry as to measurements :—The Select Committee in their report dated 2-2-1893 remarked : "To the draft section 11 we have added words requiring the Collector to enquire into the respective interests of the persons claiming the compensation as well as into the area and value of the land to be acquired. As regards draft section 12 we are of opinion that a claimant of compensation should not be precluded from taking exceptions to the measurements of the Collector, if he has good ground for considering them incorrect ; and we think that the Collector should give intimation of his award to any of the persons interested who may not be present when the award is made."

Both the Collector and the Special Judge under Act I of 1894 have limited jurisdiction. They are bound by the official declaration in the local gazette. The Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If he does so, he commits an act of trespass. He has to find out the precise quantity of land notified for acquisition within specified boundaries, value the same under the provisions of the Act and give possession accordingly. If the Local Government committed a mistake by giving an erroneous boundary, the Collector cannot cure the mistake. If the land acquired be for Government purposes, and if the Government takes possession of the land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country ; and so is a company if the acquisition is for its purpose, (m). If a person who is interested in any land acquired under the L. A. Act, has any objection to

(k) *Ezra v. Secretary of State*, 30 Cal. 36(85) 7 C.W.N. 249.

(l) *Luchmeswar Singh v. Chairman, Darbhanga Municipality*, 18 Cal. 99 ; *Gokul Krishna Banerjee v. Secy. of State*, 137 I. C. 116 : 1932 A. I. R. (Pat.) 134.

(m) *Harish Chandra Neogi v. Secretary of State*, 11 C.W.N. 875.

the measurements made by the Collector or to the amount of the compensation awarded by him, such person must obtain a reference to the Court under section 18 and cannot litigate the matter by a suit in the ordinary court, (n).

Enquiry as to valuation :—The Deputy Commissioner or the Collector specially authorised to make an award may make any enquiry through other agencies. But whenever he does so, he should by unequivocal words signify that he accepts the report of the agent appointed by him and his full signature should be appended to this declaration, (o). While the L. A. Act gives an acquiring officer very wide discretion as to the scope of the enquiry as to the materials which he may take into consideration it requires him to make an award as to the matters mentioned in section 11 and to have regard to the provisions of sections 23 and 24 in determining the amount of compensation as laid down in section 15, (p). Although the appointment of a Collector under the L. A. Act rests wholly with the Local Government yet when once they have appointed that officer, he must be allowed to prosecute his enquiry under the Act up to the end without interference from the Government in their executive capacity, (q).

In awarding compensation for land compulsorily acquired, the L. A. Officer should first of all estimate the value of the land, and with that value as a basis, take into consideration any other special factors, and calculate the proper compensation to be paid. If the value of the land can be directly estimated by the value of the property in the neighbourhood, then that is the best manner of estimating the value of the land acquired, provided that there has been a sale of the land at or about the time when the acquisition was notified under section 4. Where the sales of neighbouring land forming the basis of the award of the L. A. Officer were dated January, 1926, and the notification under the Act was dated November, 1938 and it appeared that in between these dates the price of paddy had appreciated to a certain extent, it was held that the proper method of awarding compensation was to proceed on the value of the land in the neighbourhood, at the same time making an allowance for the enhanced value in proportion to the rise in the price of paddy. In awarding compensation, whatever may be said with regard to a melwaram interest in a zemindary land or a vacant site it would be difficult to accept the current rate of interest on giltedged security as a safe guide to the multiple to be applied to the annual profit of roytwari land, (r).

Agreement as to valuation :—Although proceedings have been taken for the compulsory acquisition of land under the L. A. Act 1894, the owner and

(n) *Bhandi Singh v. Ramadhin Roy*, 10 C.W.N. 991 : 2 C.L.J. 20 n.s. 359.

(o) *Macdonald v. Secretary of State for India*, 19 P.L.R. 1909 : 123 P.R. 1908 : 4, I. C. 914.

(p) *Padamsi Narain v. Collector of Thana*, 23 Bom. L. R. 779 : 64 I. C. 103.

(q) *Dossabhai Byjanji v. Special Officer, Salsette*, 36 Bom. 599 : 14 Bom. L. R. 592.

(r) *Revenue Divisional Officer Trichinopoly v. Varadachariar*, 1944 M. W. N. 103 : 57 L. W. 115 : (1944) 1 M. L. J. 142 : A. I. R. (1944) Mad. 271, 219 I. C. 406.

the acquiring party remain competent to enter into an agreement as to the price, and an agreement so made is capable of being enforced in the ordinary way. An agreement between the parties as to price does not interfere with the jurisdiction of the Collector under the Act, (s). In order to constitute a binding agreement the intention of the parties must be distinct and common to both; an agreement does not admit of difference. Where there was agreement as to the amount of compensation to be given for the land acquired between the claimant and the acquiring body for whom the land was acquired, the L. A. Collector would not be bound to award the sum agreed upon (s). Their Lordships of the Privy Council in *Samiullah v. The Collector of Aligarh* (t), held, that the L. A. Officer under s. 11 as also the District judge under sec. 18 of the L. A. Act is bound to exercise his own judgment as to the correct basis of valuation when assessing compensation for land acquired under the Act and the judgment can not be controlled by any agreement between the parties interested. But still it would be better for the Collector to respect the contract, (u).

Mode of valuation by the Collector :—Section 15 of the Land Acquisition Act of 1894 provides that in determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Enquiry as to apportionment :—Section 11 of the L. A. Act of 1894 provides that the Collector has to enquire (1) into the objections to measurements of the lands to be acquired, (2) into the value of the land, (3) also into the respective interests of the persons claiming the compensation, and in his award he has to apportion the compensation among all the persons known or believed to be interested in the land. Under section 16 of the L. A. Act 1 of 1894 the land when acquired vests in the Government free from all encumbrances. But the land cannot vest in the Government free from encumbrances until all the interests subsisting on the land have been ascertained and paid for according to the provisions of the L. A. Act. On acquisition all private rights before existing, whether of passage or of any other kind absolutely cease upon the acquisition of land, (v). It has also been seen in the definition of the word "land" (*vide* notes under s. 3) that the legislature intended to lump together in one single expression viz., "land" several things or particulars such as the soil, the building on it, any charges on it and other interests in it which all have separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act, may require, (w). In *Bombay Improvement Trust v. Jalbhoy*, (x) Batchelor, J., has rightly observed: "Reading the Act as a whole I can come to no other conclusion than that it contemplates the

(s) *The Fort Press Co. Ltd. v. Municipal Corpn. City of Bombay*, 46 B. 797 : *Bejoy Kanta Lahiri Chowdhury v. Secretary of State*, 58 C. L. J. 38.

(t) *M. Samiullah v. The Collector of Aligarh*, 73 I. A. 44 : 50 C. W. N. 401 : I. L. R. 1946 All. 185 : 48 Bom. L. R. 439.

(u) *Ananta Ram Banerjee v. Secy. of State*, 41 C. W. N. 1291.

(v) *Municipal Commissioners of the City of Bombay v. Damodar Brothers*, 45 Bom. 725.

(w) *In re Nasiban*, 8 C. 534 ; *Government of Bombay v. Esufali Salebhoy*, 34 B. 618 : 12 Bom. L. R. 34 : 51, C. 621.

(x) *Bombay Improvement Trust v. Jalbhoy*, 33 B, 483 (495)

award of compensation in this way : first you ascertain the market value of the land on the footing that all separate interests combine to sell, and then you apportion or distribute that sum among the various persons interested."

Apportionment and persons interested :—The antithesis between "land" and "interest in land" is well marked in section 31(3) of the Act. The distinction is preserved throughout the Act where "land" is always used to denote the physical object, which is after all, the thing that has to be acquired. Provision is made for compensation to all persons interested, but claims on this head are to be adjusted in the apportionment prescribed under sections 29 and 30. Under section 3(b) the expression "persons interested" includes all persons claiming compensation to be made on account of acquisition of land under the Act. It is quite possible that a person may be interested in the compensation money without having an interest in land in the legal sense of the term. The Act does not indicate how the Collector is to effect the apportionment and sections 20 and 28 which deal with the proceedings of the Court, when a reference has been made under section 18, are also silent on the question. It is not correct that the market value of each interest is to be ascertained. The various rights of female members of a Hindu undivided family property may have no market value though such members would be interested in the compensation money. What the Collector and the Court have to do is to apportion the sum awarded amongst the persons interested in so far as possible in proportion to the value of their interests and it is impossible to lay down any general rule which can be followed, (y). Where land which is taken under the L. A. Act belongs to two or more persons the nature of whose interests therein differs, the compensation allotted therefor must be apportioned according to the value of the interests of each persons having rights therein so far as such value can be ascertained, (z). Under section 9 of the L. A. Act an enquiry by the Collector into the respective interests of the various persons interested in the land must be made before giving the final award and any such adjudication made after the award is without jurisdiction, (a).

Apportionment by consent :—When the tenants have come to a settlement with the landlord accepting definite amounts of the compensation moneys, the tenants have no further interest and the landlord is entitled to receive the enhanced compensation money, (b).

Apportionment by Collector under the Defence of India Act :—In *Pashupati Roy v. The Province of Bengal* (c), it was held that under the Defence of India Act (XXXV of 1939) an arbitrator appointed under sec. 19(b) of the Defence of India Act, 1939 had no jurisdiction to apportion the compensation awarded for land acquired under that section between persons having different interests in the property for example landlord and tenant.

(y) *In the matter of Pestonji Jehangir*, 37 B. 76 ; *Bhagirath Moodie v. Raja Johur Jummah Khan*, 18 W. R. 91.

(z) *Hirdey Narain v. Mrs. M. J. Powell*, 35 All. 9 : 13 I. C. 420.

(a) *Bago v. Roshan Beg*, 92 I. C. 434 : 1926 A. I. R. (Lah.) 321.

(b) *Secretary of State v. Nares Chandra Bose*, 44 C. L. J. 1 : (1926), A. I. R. (C) 1000.

(c) *Pashupati Ray v. The Province of Bengal*, 52 C. W. N. 739.

The Collector in making an award under Rule 75A of the Defence of India Rules was required not to value separately the separate interests in the property acquired, but to assess one single amount as compensation. In consequence of this ruling the payment of compensation in all cases where the interested parties could not agree, came to standstill. As an immediate remedy Ordinance XXII of 1949 was promulgated to enable disposal of long pending cases. As the Ordinance lapsed on the expiration, the Requisitioned Land (Apportionment of Compensation) Act, LI of 1949 was passed which received the assent of the Governor-General on 10th December, 1949 and was published in the Gazette of India, Part IV, dated the 13th December, 1949.

Section 3 of the said Act provided :—“(1) Notwithstanding anything contained in either of the Acts mentioned in section 2, where there are several persons interested in any requisitioned land, it shall be lawful, and shall be deemed always to have been lawful for an arbitrator appointed in pursuance of either of the sections mentioned in clause (a) section 2, to apportion by his award the compensation payable in respect of the requisition or, as the case may be, acquisition of the land among the persons interested”.

What is Award :—Where land is acquired compulsorily under the provisions of the L. A. Act compensation must be awarded in respect thereof, it being beyond the competence of the Collector or the Special Judge to hold that there is no interest in the land to be acquired for which the compensation is payable, (d). The ‘award’ as constituted by the L. A. Act is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among persons whose interests are not in dispute. A dispute between interested people as to the extent of the interest forms no part of the award. (e). An award made by the acquiring officer is strictly speaking not an award at all, but an offer (f). The actual payment of the compensation awarded is no part of the Collector’s award and is not necessary to the completion of it ; the award is complete as soon as the Collector apportions the amount of compensation between the parties concerned (g). S. 11 does not require the L. A. Officer to make his award under the six sub-clauses of sub-sec. (1) of Sec. 23. It is sufficient for him to state what he considers to be fair compensation to be allowed for the whole of the land under acquisition and how it should be apportioned (h). An award need not be pronounced as is done in a court of law and it is not a decree, (i).

Award when invalid :—An award must be under the hand of the Deputy Commissioner or the Collector specifically authorised to make an award. An award must also embody—

- (1) the true area of the land ;

(d) *Bejoy Kumar Auddy v. Secretary of State*, 25 C. L. J. 475 : 39, I. C. 889.

(e) *Ramachandra Rao v. Ramachandra Rao*, 26 C. W. N. 713 (P. C.) : 35 C.L.J. 545.

(f) *Asst. Development Officer, Bombay v. Tayabali Alibhoy Bohori*, 35 Bom. L.R. 763 : 1933 A. I. R. (B). 361 ; *Balaram Bhramavatar Ray v. Sham Sundar Narendra*, 23 Cal. 526.

(g) *Miran Buksh v. Feroze Din*, 232 P. L. R. 1912 ; 17 I. C. 395.

(h) *Secretary of State v. F. E. Dinshaw*, 1933, A. I. R. (S) 21.

(i) *Dinshaw Italia v. The State of Hyderabad*, A. I. R. 1955 Hyd. 203.

- (2) the compensation which in his opinion should be allowed for the land ; and
- (3) the award must be filed in the Collector's Office as required by Sn. 12.

An award, which instead of being in the hand of that officer, bears only his initial, does not conform to the provisions of section 11 of the Act and is therefore no award at all. Until an award is announced or communicated to the parties concerned, it cannot be said to be legally made, (j). In the absence of a valid award the civil court has no jurisdiction to take any proceeding on reference made to it, (k). In *Re. Sukchand Gurmukhroy (l)*. A Deputy Collector who was appointed an acquiring officer under the L. A. Act valued certain lands compulsorily acquired by Government and submitted a proposed award for approval to the consulting surveyor to Government through the Collector. It was, however, returned by him with the objection that the valuation was excessive. The Deputy Collector who had meanwhile been transferred to another part and succeeded in his office by an Assistant Collector, adhered to his original valuation but remarked that as his proposed award had not been filed in the Collector's office and had not been declared to the parties interested, it could, if necessary, be reconsidered by the Assistant Collector who reconsidered the award, agreed to the lower valuation suggested by the consulting surveyor, had it approved by the Collector, and made it final and declared it to the parties. The claimants contended that the award made by the Deputy Collector in the first instance was the only valid award and that the second award made by the Assistant Collector was not valid. It was held, on the special facts of the case that the Deputy Collector had not made the award within the meaning of section 11 of the L. A. Act. The mere signing of a document by an acquiring officer expressing his opinion as to the amount of compensation to be offered to persons whose land is being acquired does not amount to the making of an award within the meaning of section 11 of the L. A. Act and has no binding effect, where the officer does not intend the document to be final. Some further formality is required in general principle before it becomes binding on Government and the formalities are prescribed by section 12. It must be filed and so become a part of the office record, and then it shall be final and conclusive evidence between the Government and the parties interested, (m).

Award piecemeal :—By a notification of the 16th February 1915, the Government declared that a portion of the premises 147 Russa Road amounting to 1 bigha, 16 kottas, 3 chattaacks was required for public purposes. As the result of an appeal (*Trustees for the Improvement of Calcutta v. Chandra Kanta Ghose*, 44 Cal. 219 : 24 C. L. J. 246) notice was issued on the 30th March for the acquisition of 14 kottahs, 10 chattaacks 27 sq. ft. in lieu of

(j) *Raja Harish Chandra Raj Singh v. Dy. L. A. Officer*, A. I. R. 1961 S. C. 1500.

(k) *Macdonald v. Secretary of State*, 19 P. L. R. 1909 : 4 I. C. 914.

(l) *In re Sukchand Gurmukhroy*, 11 Bom. L. R. 1176 : 4 I. C. 278.

(m) *Padamsi Narain v. Collector of Thana*, 46 Bom. 366 : 28 Bom. L. R. 779 : 64 I. C. 103 : *Kooverbai Sorabji Manekji v. Assistant Collector, Surat*, 22 Bom. L. R. 1136.

1 bigha 16 kottas 3 chattacks as set out in the original declaration. Out of the 14 kottas 10 chattacks and 27 Sq. ft. 8 kottas 4 chattacks and 34 sq. ft. was acquired and award was made on the 29th May. The Collector again, on the 7th Nov. 1917 (after the Privy Council decision in the case of *Trustees for the Improvement of Calcutta v. Chandra Kanto Ghose*, (n), gave notice that he would acquire the balance of the land mentioned in the declaration of 16th February, 1915. To this objection was taken, the argument being that the L. A. Act contemplates one declaration, one notice, one proceeding and one award, and as there already was one proceeding and award in respect of the 8 kottas odd it was contended that the power to take action under the Act was exhausted and the subsequent acquisition was without jurisdiction. The Court held: "We must distinguish between two cases of what have been called piecemeal acquisition. A declaration may be issued for a quantity of land consisting of several holdings belonging to different owners. It is thus often necessary to make separate awards for different portions of the land covered by a single declaration, (See Executive Instruction, Government of Bengal, Ch. V. p. 554). There is no objection to separate proceedings being taken in respect of separate holdings. It is, however, a different matter where as here, there is one holding. In such a case it does not seem reasonable to hold that there can be a piecemeal acquisition. The Act refers only to one notice, one proceeding and one award to be given, taken and made regarding one holding and one ownership." (o). But if the Collector was prevented from following that course by the decision of a Court of competent civil jurisdiction or by an order of injunction, proceedings were held up regarding portions of land declared for acquisition and proceedings had gone on as regards the rest it could not have been contended that the further proceedings were barred if and when the injunction was removed. No piecemeal award when there is one holding, (p).

Award to be one :—According to the terms of s. 11 and the succeeding sections of L. A. Act, it is clear that the Collector must, when he makes his award, take into account the interest of all parties and assess the total amount of compensation and apportion it as between the claimants. A series of awards in respect of the same property is not contemplated by the Act. If a person interested is not given anything by the apportionment his remedy is to claim reference challenging the award and not to ask for another award in his favour, (q).

Land under same notification belonging to different persons :—The Land Acquisition Act does not contemplate that where more than one person is interested in a parcel of land there should be more than one award relating thereto. But where the lands, although acquired under one and the same

(n) *Trustees for the Improvement of Calcutta v. Chandra Kanto Ghose*, 47 Cal. 500 : 32 C. L. J. 65 (P. C.).

(o) *R. C. Sen v. Trustees for the Improvement of Calcutta*, 48 Cal. 893 : 33 C. L. J. 509 : 64 I. C. 577.

(p) *Corporation of Calcutta v. Omeeda Khatun*, A. I. R. 1956 Cal. 122.

(q) *Secretary of State v. Karim Bux*, 1939 A. L. J. 85 : A. I. R. 1939 All. 130.

notification belong to different persons, there is no objection to separate awards being made in respect of those *lands*, (r).'

Date of the Award :—Question arises as to what is to be taken as the date of the award. Whether the date is that when the award is made and signed under this section or the date on which it is announced or the date on which notice of award is served on a person interested under Sn. 12(2), or when the award is filed with the Collector. In some cases it has been held that an award is made for the purpose of sections 11, 12 and 18 of the Act as soon as it is written out and signed, (s).

The other view was that an award is not made until it is announced to the persons interested or until it is filed in the Collector's office, (t). But recently the Supreme Court has finally settled the point, in *Raja Harish Chandra v. Dy. L. A. Officer*, (u), by holding that the making of the award must involve the communication of the offer to the party concerned and the date of the award must be determined from the date when the party concerned came to know of it actually or constructively. Limitation under s. 18 runs from the date of communication of the contents of the award, (v).

Supplementary award :—Although the Collector, after he has made his award under s. 11 of the L. A. Act, is not competent to amend it or make a supplementary award except in case of clerical errors or other mistakes or omission apparent on the face of the records, he is not in any way incompetent to enter into a compromise with the claimants who have got reference under s. 18 of the L. A. Act and pay them an extra sum of money on the basis of such settlement on condition of their withdrawing the reference. An entry of such an order for payment in the award statement kept in form A prescribed in Appendix 7 of the Civil Account Code does not amount to an amendment of the award itself. The award statement is, therefore, not inadmissible in evidence, (w).

Collector's power to review his award :—A Collector acting under the L. A. Act is not competent to review his order awarding compensation as sec. 53 of the Act which provides for the application of the Civil Procedure Code, does not apply to proceedings before the Collector but only to proceedings before the Court (x).

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- (r) *Prag Narain v. Collector of Agra*, A. I. R. 1932 P. C. 102. *Abdul Hakim v. State of Madhya Pradesh*, A. I. R. 1964, Madh. Pra. 171.
- (s) *In re Government and Nanu Kothare*, I. L. R. 30 B. 275 ; *Ravunni Nair v. State of Tr. Cochin*, A. I. R. 1955 Tr. Co. 444 ; *Padamsi Narain v. Collector of Thana*, 23 Bo. L. R. 779. *Nodu Chand v. State of West Bengal*, A. I. R. 1952 Cal. 67.
- (t) *Macdonald v. Secretary of State*, 14 I. C. 914 (Lah.) ; *Haridas v. Municipal Board of Lucknow*, 22. I. C. 652 ; *Secretary of State v. Bhgawan Prasad*, A. I. R. 1929, A. 769.
- (u) *Raja Harish Chandra Raj Singh v. Dy. L. A. Officer*, A. I. R. 1961 S. C. 1500 : 1962 (1) S. C. J. 696 : 1962 (1) S. C. R. 676. *Mudhiah Chettiar v. Rev. Div. Officer*, 1968 (1) M. L. J. 107.
- (v) *State of Punjab v. Qaisar Jehan Begum*, 1964 (1) S. C. R. 971 : A. I. R. 1963 S. C. 1604.
- (w) *Province of Bengal v. Satish Chunder De*, 43 C. W. N. 1185 : 73 C. L. J. 595.
- (x) *Kashi Parshad v. Notified Area, Mahoba*, 54 All. 282 : 143, I. C. 111 : 1932 A. I. R. (All) 598.

High Court's power to interfere and res judicata :—When a portion of land is acquired and compensation awarded in an earlier proceeding as also for a part of same land acquired in a subsequent proceeding, and there was failure to file the claim in subsequent proceeding, the High Court is competent to deal with reason given for failure to file claim under s. 9 and the previous award is not *res judicata*, (y).

Collector's award is not an adjudication :—Proceedings under the L. A. Act 1894 resulting in an award are, as has been observed, administrative and not judicial and the award in which the enquiry results, is merely a decision binding only on the Collector as to what sum shall be tendered to the owner of the lands, and if a judicial ascertainment of the value is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the Court under section 18 of the Act, (z). As between the claimants *inter se* an award by Collector under section 11 of the L. A. Act does not amount to an adjudication of any question regarding the apportionment of compensation adjudged under the L. A. Act. Any such question can be determined only by the civil court. Where an award has been made by the Collector but has not been followed by a reference to the civil court under section 18 of the L. A. Act, there has been no adjudication of the rights of the claimants *inter se*, and a claimant who appeared before the Collector when the award was made but yet did not apply for a reference under section 18 of the L. A. Act can maintain against any person who may have received the whole or any part of the compensation awarded, a civil suit to establish his own claims to such compensation under the last proviso of sub-section (2) of section 31 of the L. A. Act (a).

The award per se is no evidence of the market value :—It has been held *In the matter of Karim Tar Mahomed*, that the award by itself is not evidence of the market value without considering all the evidences on which the award was founded, (b).

Award binding on Government only :—The Collector's award under the L. A. Act is only a tender binding on the acquiring party and the claimants are not bound to accept it, (c). It has been seen that throughout the proceedings, the Collector acts as the agent of the Government for the purpose of acquisition clothed with certain powers to require the attendance of person to make statements relevant to the matter enquired into. He is in no sense of the term a judicial officer nor is the proceedings before him a judicial proceeding, (d). Their Lordships of the judicial committee observed that with regard to the second enquiry directed by the Act as to the value of the land taken thereunder, the duty of the Collector under the section relating thereto is to fix the sum which in his best judgment is the value. His proceedings are administrative and not judicial and his award though

(y) *State of Bihar v. Bhagwan Shah*, A. I. R. 1964 Pat. 484.

(z) *Secretary of State v. Quamar Ali*, 16 A. L. J. 669 : 51 I. C. 501.

(a) *Raja Nilmony Singh v. Ram Bandhoo Ray*, 7 Cal. 388. *Sreemutty Punnabati Debi v. Raja Padmananda Singh*, 7 C. W. N. 538.

(b) *In the Matter of Karim Tar Mahomed*, 33 Bom. 325.

(c) *Gangadas Mulji v. Hajee Ali Mahammad*, 18 Bom. L. R. 826 ; 36 I. C. 433.

(d) *Ezra v. Secy. of State*, 30 Cal. 36 : 7 C. W. N. 249.

conclusive against the Government is subject to the landowner's right to have the matter referred to the Court. Macleod C. J. observed "the mere signing of a document by an acquiring officer expressing an opinion as to the amount of compensation to be offered to persons whose land is being acquired does not amount to the making of an award within the meaning of section 11 of the L. A. Act, and has no binding effect, where the officer himself does not intend the document to be final. Some further formality is required in general principle before it becomes binding on Government and the formalities are prescribed by section 12, (e). When the Collector appointed under the L. A. Act 1 of 1894 once makes the enquiry prescribed by the Act and reaches his own conclusions as to the amount of compensation to be awarded to the claimant, it is competent to the Government to set aside the conclusion and to direct the Collector to substitute a smaller amount than that which, as a result of his enquiry, he has determined to offer, (f). Proceedings under the L. A. Act resulting in an award are administrative and not judicial and the award in which the enquiry results, is merely a decision binding only on the Collector as to what sum shall be tendered to the owner of the land and if a judicial ascertainment of the value is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the Court under section 18 of the L. A. Act, (g).

Objections to the Award :—It should be noted, however, that objections as to the measurement, valuation or damages should be taken before the Collector, as a claim or objection will not be entertained by a civil court unless it was originally made before the Collector, (h). In a proceeding under the L. A. Act a party who has raised no objection to the apportionment of the compensation made by the Collector must be taken to have accepted the award in that respect, (i). The ordinary rule in a proceeding under the L. A. Act is that the party who has raised no objection to the apportionment of the compensation made by the Collector must be taken to have accepted the award in that respect, and such person, upon a reference made by some other party who consider himself aggrieved by the award of the Collector, is not entitled to have it varied for his own benefit. In other words, the civil court is restricted to the examination of the question which has been referred by the Collector for decision and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained any order of reference. But the rule is inapplicable to a case where the scope and object of reference obtained by the aggrieved party was not to settle the question of apportionment as between himself and the other party who had raised no objection but merely to obtain a final benefit for both, (i).

(e) *Padamsi Narain v. Collector of Thana*, 23 Bom. L. R. 779 : 64 I. C. 103.

(f) *Dessabhai Bejanji v. The Special Officer, Salsette*, 36 Bom. 599 ; 14 Bom. L.R. 592.

(g) *Secretary of State v. Quamar Ali*, 16 A. L. J. 669 : 51 I. C. 501. *Raja Harish Chandra v. Deputy Land Acquisition Officer*, A. I. R. 1961 S. C. 1500 : 1961 A. L. J. 650.

(h) *Umar Baksh v. Secretary of State*, 46 I. C. 906.

(i) *Abu Baker v. Peary Mohan Mukherjee*, 34 Cal. 451.

(j) *Bejoy Chand Mahatap v. P. K. Majumdar*, 13. C. L. J. 159.

Remedy of persons dissatisfied with the Collector's award :—In *Jogesh Chandra Roy v. Secretary of State*, (k), the claimant being dissatisfied with the Collector's award, instead of applying to the Collector to make reference under the provisions of section 18 of the L. A. Act, instituted a suit for damages against the Secretary of State for India-in-Council for the value of the land which had been acquired by the Government. The Court held "that a suit of this sort does not lie. The plaintiff had ample remedy by applying to the Collector to make a reference under section 18 of the L. A. Act and to have his rights adjudicated on by a civil court". The two cases which are chiefly relied on, viz., the cases of *Mantharavadi Venkaya v. Secretary of State*, and *Rameshwar Singh v. Secretary of State*, (l), are clearly against the plaintiff's contention. All that those cases establish is this that where the Collector won't take up the matter and won't make an award, then in order that the plaintiff may not be deprived of this remedy, he may maintain a suit in the ordinary court for compensation which the Collector declines to assess. These do not apply to the case where the Collector had made an award and where the plaintiff has got a right of calling upon the Collector to refer the matter to the civil court under the provisions of section 18 of the L. A. Act.

In *Punnabati Debi v. Raja Padmanand Singh*, (m), it was held that where an award has been made by the Collector but has not been followed by a reference to the civil court under section 18 of the L. A. Act, there has been no adjudication of the right of claimants *inter se* and a claimant who appeared before the Collector when the award was made, but yet did not apply for a reference under section 18 of the Act, can maintain against any person who may have received a whole or part of the compensation awarded, a civil suit to establish his own claim to such compensation. This view has been expressly dissented from in *Saibesh Chandra Sarkar v. Bejoy Chandra Mahatap*, (n), in which some lands were acquired and the Collector after serving notice under the L. A. Act upon the zemindar and the putnidar apportioned the compensation money half and half between them. Neither party applied for a reference under section 18 and the putnidar withdrew the amount awarded to him. The zemindar thereupon brought a suit for recovery of the amount withdrawn by the putnidar on the ground that under the putni kabuliati the putnidar was not entitled to any compensation money. It was held that the zemindar having been served with a notice under section 18 when he was dissatisfied with the award, and he cannot maintain a suit in the ordinary court to re-open the question. The Act creates a special jurisdiction and provides a special remedy. And ordinarily when jurisdiction has been conferred upon a special court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and

(k) *Jogesh Chandra Roy v. Secretary of State*, 29 C. L. J. 53.

(l) *Mantharavadi Venkaya v. Secy. of State*, 27 Mad. 535 ; *Rameswar Singh v. Secy. of State*, 34 Cal. 470 : 11 C. W. N. 356 : 5 C. L. J. 669.

(m) *Punnabati Debi v. Raja Padmanand Singh*, 7 C. W. N. 538.

(n) *Saibesh Chandra Sarkar v. Bejoy Chandra Mahatap*, 26 C. W. N. 506.

the ordinary jurisdiction of the civil court is ousted, (o). Under the third proviso to section 31(2) a person who was a party to the apportionment proceeding cannot reopen the question by a regular suit, (p). The conclusion seems to be that a civil suit will lie only when the Collector refuses to make an award or to take up a matter.

Jurisdiction of civil court to review the Collector's award :—In *British India Steam Navigation Company v. Secretary of State for India* (q), it was argued that the Land Acquisition Judge has jurisdiction to review the award of the Collector, to set it aside as illegal and made in contravention of the provisions of the law, and to direct him to recast, modify and reduce it. The Court held : "there is no room for controversy that the court of the land acquisition judge is a court of special jurisdiction, the powers and duties of which are defined by the statute and that there is no foundation for the contention that a court of this description can be legitimately invited to exercise inherent powers so as to assume jurisdiction over matters not intended by the legislature to be comprehended."

Jurisdiction of High Court to revise the Collector's award :—It has already been seen that the Collector when he holds an enquiry and makes award under section 11 of Act I of 1894 is not a court and is undoubtedly not a court subject to the appellate jurisdiction of the High Court. When the sections relating to the Collector's award are read together it is found that the proceedings resulting in an award are administrative and not judicial ; that the award in which the enquiry results is merely a decision binding upon the Collector as to what sums shall be tendered to the owners of the lands, and that if a judicial ascertainment is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the court. It is reasonably clear from an examination of the provisions relating to an enquiry and award by the Collector that he is not a court within the meaning of section 115 of the C. P. C. (1908), much less is he a court subject to the appellate jurisdiction of the High Court within the meaning of section 15 of the High Courts Act of 1861. To attract the operation of s. 15 of the High Courts Act of 1861, it must be established in the first place, that the order assailed has been made by a court subject to the appellate jurisdiction of the High Court (r).

Writ applications :—Now applications under Articles 226 and 227 of the Constitution are maintainable. The Collector is a Tribunal within the meaning of Art. 227 of the Constitution. But if an award is not challenged in regular proceedings as provided in law, a petition under the writ jurisdiction can not be maintained in law challenging the acquisition proceedings

(o) *Bhandi Singh v. Ramadhin Roy*, 10 C. W. N. 991 : 2 C. L. J. 20n ; *Stevens v. Jeacocke*, (1848) 11 Q. B. 731 ; *West v. Downman*, (1880) 14 Ch. D. 111 ; *Ramachandra v. Secretary of State*, 12 Mad. 105.

(p) *Shoshi Mukhi Debya v. Keshab Lal Mukherjee*, 27 C. W. N. 809.

(q) *British India Steam Navigation Company v. Secretary of State*, 38 Cal. 230 : 15 C. W. N. 87 : 12 C. L. J. 505 ; 8 I. C. 107.

(r) *British India Steam Navigation Coy. v. Secretary of State*, *ibid.*
Ezra v. Secretary of State, *ibid.*

as invalid, (s). But in a writ petition a question of fact can not be agitated or re-opened, (t).

Award of Collector when to be final

12. (1) Such award shall be filed in the Collector's office and shall except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and the value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

State Amendments

1. **Maharashtra.**—By *Bombay Act XXXV of 1953, Sec. 4* :—

In section 12 of the said Act—

(1) in sub-section (1), after words “and shall” the words, figures and letters “subject to the provisions of section 15A and” shall be inserted :

(2) in sub-section (2), after the word “award” where it occurs for the first time, the words, figures and letters “or the amendment thereof made under section 12A” shall be inserted ; and after the word “award” where it occurs for the first time the words “or amendment” shall be inserted.

2. **Uttar Pradesh.**—By *U. P. Act XXII of 1954, sec. 2* :—

In sub-section (2) of section 12, after the word “made” insert the words “and also send a copy of the award to the Land Reforms Commissioner”.

3. **Maharashtra.**—By *Bombay Act XXXV of 1953, sec. 5* :—

After section 12 of the said Act the following section shall be inserted, namely :—

12A. *Amendment of award.*—(1) Any clerical or arithmetical mistake in an award or errors arising therein from accidental slips or omission may, at any time not later than six months from the date of the award, be corrected by the Collector either on his own motion or on the application of a person interested and the words so corrected shall be deemed to have been amended accordingly.

(2) If the award so amended discloses any overpayment, the Collector shall either immediately after the amendment of the award or after

(s) *Nagendra Nath Das v. State of West Bengal*, 70 C. W. N. (notes) xiv.

(t) *Bimala Prasanna Roy v. State of West Bengal*, 55 C. W. N. 87 ; *Syed Abdul Gaffur v. State of West Bengal*, 73 C. W. N. 649.

the expiry of the time allowed to make a reference to the court from the amendment of the award, issue a notice to a person to whom overpayment was made that if the amount overpaid is not paid back to the State Government within one month after receipt of the notice, the amount overpaid shall be recovered as an arrear of land revenue and after the expiry of the time stated in the notice the amount shall be so recoverable.

4. **Bihar.**—By *Bihar Act XI of 1961, sec. 8* :—

After section 12 of the said Act, the following section shall be inserted, namely :—

12A. *Correction of award.*—(1) The Collector may, before a reference, if any, is made under section 18

- (i) On his own motion, within six months from the date of the award, or
- (ii) On the application of the person interested made within six months from the date of the award, correct any clerical or arithmetical error in the award.

(2) The Collector shall give immediate notice of any correction made in the award to all persons interested.

(3) Where as a result of a correction made under sub-section (1), it appears to the Collector that any amount has been paid in excess to any person, such person shall after having been given an opportunity of being heard, be liable to refund the excess and if, on an order made by the Collector in this behalf, he fails or refuses to pay it, the same shall be realised as a public demand.

5. **Gujarat.**—Same as that of Maharashtra.

6. **Mysore.**—*The Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961.*

(See under Part III, Chapter X, Mysore).

7. **Punjab.**—*The Land Acquisition (Punjab Amendment) Act 17 of 1962* :—

2. Amendment of Section 12 of Central Act I of 1894.—In sub-section (2) of Section 12 of the Land Acquisition Act 1894, in its application to the State of Punjab (hereinafter referred to as the principal Act), after the word “made” the words “and, where the acquisition of land is not for the purposes of the Union, also send a copy of the award to the State Government” shall be added.

3. Insertion of new Section 12A in Central Act 1 of 1894 :—After Section 12 of the principal Act, the following section shall be inserted, namely.

“12A. **Power to correct award** :—(1) The Collector may, at any time but not later than six months from the date of the award or where a reference is required to be made under section 18, before the making of such reference, correct any clerical or arithmetical mistake in the award either of his own motion or on the application of the person interested.

(2) The Collector shall give immediate notice of any correction made in the award to all persons interested and where the acquisition of land is not for the purposes of the Union, also to the State Government.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), such person shall be liable to refund the excess, and if he defaults or refuses to pay, the same may be realised as an arrear of land revenue”.

Notes

The section corresponds to sec. 14 of Act X of 1870 which ran as follows :

"If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same".

Award when becomes final :—An award made by a Collector in the land acquisition proceedings becomes final and binding only when it is filed under section 12 of the L. A. Act, the mere signing of the award by the Collector does not make it conclusive. Before filing an award it is open to the Collector to destroy one which he has already signed and to substitute another in its place, (a). The mere signing of a document by an acquiring officer expressing his opinion as to the amount of compensation to be offered to persons whose land is being acquired does not amount to the making of an award within the meaning of section 11 of the L. A. Act and has no binding effect where the officer himself does not intend the documents to be final. Some further formality is required on general principle before it becomes binding on Government and the formality is prescribed by section 12. *It must be filed and so becomes a part of the office records* and then it shall be final and conclusive evidence between the Government and the parties interested (b). The actual payment of the compensation awarded is no part of the Collector's award and is not necessary to the completion of it ; the award is complete as soon as the Collector apportiones the amount of compensation between the parties concerned, (c).

The award given by the Land Acquisition Officer and filed with the Collector, is final. It is presumed to be correct until it is set aside or modified on a reference under s. 18. Even though it be erroneous, as long as it stands, the Collector can not ask a person interested to refund any money which may have already been paid to him under the award, (d). The expression 'final and conclusive evidence' does not apply to persons interested *inter se* that is to say in the apportionment of the total amount amongst them. They can vary the Collector's apportionment by agreement amongst themselves and under s. 29 such agreement is then conclusive evidence of the correctness of the apportionment. In the absence of such an agreement, a party dissatisfied may take the question of apportionment to a Civil Court. The award is final as between the Collector on the one hand and the body of claimants on the other, (e).

(a) *Kcoverbai Sorabji v. Assistant Collector, Surat*, 22 Bom. L. R. 1136 : 59 I. C. 429.

(b) *Padamsi Narain v. Collector of Thana*, 46 Bcm. 366 : 23 Bom. L.R. 779 : 64 I.C. 193.

(c) *Miran Baksh v. Feroze Din*, 232, P. L. R. 1012 : 17 I. C. 395.

(d) *Satya Narain Singh v. Kamakshya Narain Singh*, A. I. R. 1956, Pat 360.

(e) *Raja Nilmoni Singh v. Ram Bandhu*, 7 Cal. 388 P. C. ; *Secretary of State v. Naresh Chandra*, 1926 Cal, 1000 : 44 C. L. J. I,

Bar of Suit :—The only remedy open to a person who is dissatisfied with the award is to require the Collector to make a reference to the Civil Court under s. 18 and a separate suit to recover the land will not lie, (f). An application for writ will lie, (g). Suit is maintainable when the Collector would not take upon a case or would not make an award (h).

Notice of the award :—Until an award is announced or communicated to the parties concerned, it cannot be said to be legally made. In the absence of a valid award a civil court has no jurisdiction to take any proceeding on a reference made to it (i). Service of a notice under section 12(2) must be made whenever practicable, on the person named in the notice and when such person cannot be found, the notice must be served in the manner prescribed by section 45(3) of the Act. An award was passed under section 12(1) of the L. A. Act. Notice required by section 12(2) of the Act was served on the manager of an estate for which a receiver had been appointed and there was nothing to show that the receiver had authorised the manager to accept such notice on his behalf. It was held that the service was not valid. Whether the provisions of the Civil Procedure Code relating to the service of summonses apply to the service of notices under the L. A. Act by virtue of section 53 was quæried (j). An award written or signed by the Collector without being made in the presence of or communicated to the applicant is *qua* the applicant no award at all and the period of limitation for filing an objection to the award can only be computed from the date when the award is made within the applicant's knowledge, (k).

The award is in a sense a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. But legally the award cannot be treated as a decision. It is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. As it is no more than an offer, the award must involve the communication of the offer to the party concerned, (l).

Immediate notice of the award :—After directing in sub-section (1) that the Collector's award, when made, shall be filed in his office, section 12 sub-section (2) of the Act prescribes that "the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made." The next section which is material is section 18 of the Act. It gives the party interested, who has not accepted the award, a right to require the Collector to make a reference to the Court, but it provides that the right must be exercised by the party within the period prescribed therein, viz., "within six weeks

(f) *Jogesh Chandra v Secretary of State*, 29 C. L. J. 51 ; *Ezra v. Secretary of State*, 32 Cal. 605 (P. C.) ; *Rameswar Singh v. Secretary of State*, 34 Cal. 470.

(g) *Pannalal v. State of Bihar*, A. I. R. 1955 Pat. 63, *Collector of Kamrup v. Kamakhya Ram Barooah*, (1965) I, S. C. R. 265.

(h) *Rameswar Singh v. Secretary of State*, 34 Cal. 470.

(i) *Macdonald v. Secretary of State*, 19 P. L. R. 1909 ; 123 P. R. 1908 ; 4 I. C. 914.

(j) *Papamma Rao Garu v. Revenue Divisional Officer, Guntur*, 42 I. C. 235.

(k) *Haridas Pal v. The Municipal Board, Lucknow*, 16 O. C. 374.

(l) *Raja Harish Chandra v. Deputy Land Acquisition Officer*, A. I. R. 1961, S. C. 1500 ; 1961 A. L. J. 650,

of the receipt of notice from the Collector under section 12(2) or within six months from the date of the Collector's award whichever period shall first expire." The word 'notice' in cl. (b) of the proviso to section 18 of the L. A. Act means notice whether immediate or not. The language of cl. (b) of the proviso to section 18 modifies or controls the language of sub-section (2) of section 12, or, what is more appropriate to say, which makes clear the intention of the legislature that a late notice may be given by the Collector as well as an immediate notice. Why then, it may be asked, have the legislature imposed upon the Collector the duty of giving immediate notice by sub-section (2) of section 12 of the Act? The answer to that is afforded by the purpose and the policy of the L. A. Act. If on the part of the Collector there has been failure to give immediate notice of his award, and if the party interested in the award has suffered prejudice thereby, no doubt, that party would be entitled to insist that the notice should have been "immediate". But what prejudice can a claimant suffer from the mere fact that the Collector has given him no immediate notice; in any case the proceedings shall be final after six months from the date of the award. This evidently contemplates that a party interested should not sit quiet waiting for the Collector's notice or plead want of it, but should in any case himself be vigilant. The longer period of six months from the date of the award is given him as an alternative where the Collector has not been himself prompt. The lateness of the notice cannot, therefore, affect the question of limitation and no prejudice can possibly arise to the claimant in respect thereof. If this consideration is borne in mind, it becomes plain that sub-section (2) of section 12 provides that the Collector "shall give immediate notice" solely in the interests of the public with a view to ensure that the compulsory acquisition shall be in all respect facilitated and completed without delay. When that sub-section directs that the Collector shall give "immediate notice" it does not confer a right upon the person to such notice so as to entitle him to say that a late notice is bad, but it imposes a duty upon the Collector, in the interests of the public, to ensure prompt, vigorous action on his part for the speedy acquisition of the property and a speedy determination of all disputes, (m). The provision as to a notice is intended to be directory and not mandatory, (n). So, if the notice is not given the award is not invalid, (o).

Distinction between notice under s. 12(2) and s. 9 :—Notice under s. 12(2) unlike a notice under s. 9 of the Act is not intended to invite objections to an act which has not been done. A notice under s. 12(2) is only a notice *ex post facto*. It is a notice of a *fait accompli* namely of an award already made. It is only an informative notice, its purpose being to enable each person to call for reference under s. 18 within time. So failure to give a notice under s. 12(2) does not vitiate the award itself, (p).

(m) *In the matter of Government and Nanu Kothare*, 30 Bom. 275 : 7 Bom. L. R. 697.

(n) *Darya Dinomal v. Secretary of State*, 2 S. L. R. 68.

(o) *Nodu Chand Mallik v. State of West Bengal*, A. I. R. 1952, Cal. 67.

(p) *Kamala Kuriwar v. Lakshman Goala*, A. I. R. 1967 Cal. 105.

But where no notice is given of apportionment proceedings, a claimant is not bound by the award, (g).

Tender of payment of compensation :—The Collector is bound not only to give immediate notice to the persons interested but also to tender payment of compensation to them under s. 31 *infra* which states that “on making an award under Sec. 11, the Collector shall tender payment of the compensation awarded by him to the persons interested, entitled thereto according to the award and shall pay it to them unless prevented by one of the contingencies mentioned in the sub-section.

Adjournment of enquiry

13. The Collector may, for any cause, he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Notes

The section corresponds to s. 12 of the old Act X of 1870 which ran as follows—

“The Collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, from time to time postpone the enquiry to a day to be fixed by him.”

Power to summon and enforce attendance of witnesses and production of documents

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the ¹Code of Civil Procedure (XIV of 1882).

Notes

Legislative history :—Sec. 11 of the Old Act X of 1870 has been split in two parts. One part is section 11 and the other part is section 14 of the present Act.

Claim valid though late :—If a person fails to make a claim for compensation on the day fixed by the notice issued under section 9 of the L. A. Act the L. A. Officer, can, if he chooses, adjourn the hearing and allow him to make a claim on a subsequent date (a). It was held that it

(g) *Saibesh Chandra Sarcar v. Bejoy Chand Mahatap*, 26 C. W. N. 505 : 65 I. C. 711.

¹ See now Act 5 of 1908.

(a) *Chigurupati Subbanna v. Dist. Labour Officer, East Godavari*, 53 Mad. 533 ; 59 M. L. J. 33 : 127 I. C. 300 : 1930. A. I. R. (M) 618.

could not be said that the claimant omitted to make a claim pursuant to the notice under sec. 9 merely because he did not make it by the date originally fixed in the notice. In that case the proceedings before the Collector were adjourned from time to time, and that the claim, if any, made before the award was a claim pursuant to the notice under sec. 9(2), (b). In a case under the L. A. Act the owner's claim was not filed until after the time prescribed therefor, but no objection was taken on that score before the Collector. It was held that it was too late to raise the objection when the case had come in reference before the Dist. Judge, (c).

Powers of the Collector in enquiries under the Act :—Sections 13 and 14 empower the Collector to adjourn the enquiry from time to time and to compel the attendance of witnesses and the production of documents in the same manner as is provided in the case of a civil court under the Code of Civil Procedure to enable him not only to arrive at a fair valuation of the lands to be acquired but also in apportioning the compensation money amongst the persons interested. These provisions were found necessary in view of the fact that the L. A. Collector, as has been seen, acts as the agent of Government for the purposes of acquisition and is in no sense of the term a judicial officer nor is the proceeding before him a judicial proceeding, (d). His enquiry and his valuations are *departmental in their character and made for the purpose of enabling* the Government to make a tender through him to the persons interested. *Vide* notes under section 11. The Collector not being a "court" or a "judicial officer" has no right to compel the attendance of witness and the production of documents unless he is specially authorised on that behalf and in the absence of express legislation he would have been powerless to have the proper materials before him either for valuation or for apportionment of the compensation money. The legislature, therefore, inserted the section with the following statement, viz. : "A question having been raised as to the competency of the Collector to summon the parties interested as witnesses under section 14, we have thought it well to remove all doubt by inserting a specific reference to such parties in the section." *3rd Report, Select Committee, dated, the 25th January, 1894.* For procedure of summoning of witnesses and production of documents, see Or. XVI C. P. C., Act V of 1908.

But as he is not a Court there can be no action for giving false testimony before him, there can be action only for disobedience to orders, (e).

Matters to be considered and neglected

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

(b) *Secy. of State v. Sohanlal*, 44 I. C. 833.

(c) *Lachman Prasad v. Secy. of State*, 43, All, 652.

(d) *Durgadas Rakshit v. Queen Empress*, 27 Cal. 820.

(e) *Ezra v. Secretary of State*, I. L. R. 30 Cal. 36 affirmed in I. L. R. 32 Cal. 605 P. C.

State Amendments

1. **Maharashtra.**—By *Bombay Act XXXV of 1953, sec. 6* :—

After section 15 of the said Act, the following section shall be inserted, namely :—

15A. *Power of State Government to call for proceedings and pass orders thereon.*—The State Government may, at any time before an award is made by the Collector under section 11, call for and examine the record of any order passed by the Collector or of any inquiry or proceedings of the Collector, for the purpose of satisfying itself as to the legality or propriety of any order passed and as to the regularity of such proceedings. If in any case, it shall appear to the State Government that any order or proceedings so called for should be modified, annulled or reversed, it may pass such order thereon as it deems fit.

2. **Bihar.**—*Bihar Act XXVI of 1948, Sch. Para 1.*

"In Section 15 for the words and figures "and 24" the figures, words and letters "24 and 24-A" preceded by a comma shall be deemed to be substituted."

Bihar Town Planning and Improvement Trust Act 35 of 1951.—

In Schedule referred to in S. 73 :—

"3. In Section 15 of the said Act, word and figures "24 and 24-A" shall be deemed to be substituted.

[See under Part III, Chapter III, Bihar (7)].

3. **Calcutta.**—*Calcutta Improvement Trust Act, Bengal Act V of 1911 S. 71 and Sch. Para 3* :—

[See under Part III Chapter XX, W. B. (2)].

4. **Madras.**—*Madras Act XVI of 1945, Sch. Para 3.* Same as that of Bihar.

5. **Madhya Pradesh.**—*C. P. Act II of 1922, S. 4* :—

4. "In Section 15, for the word and figures "24" the words, figures letters "or section 24-A" shall be deemed to be substituted."

[See under Part III, Chapter VIII, M. P. (3)].

6. **Maharashtra (Vidarbha).**—Same as that of Madhya Pradesh.

7. **Nagpur.**—*C. P. Act XXXVI of 1936, S. 61 and Sch. Cl. 4* :—

[Same as that of Bihar. See under Part III, Chapter VIII, M. P. (4)].

8. **Punjab.**—*The Punjab Act IV of 1922, S. 59 and Sch. Cl. 4.*

[Same as that of Bihar. See under Part III, Chapter XII, Punjab (4)].

9. **Uttar Pradesh.**—*U. P. Act X of 1945, S. 9, Sch. Para 1 and S. 376 and Sch. II, Para 4.*

Same as that of Bihar.

10. **Gujarat.**—Same as that of Maharashtra.

11. **Mysore.**—*The Land Acquisition (Mysore Extension and Amendment) Act No. I of 1961.*

[See under Part III, Chapter X, Mysore].

Notes

The above section corresponds to Sec. 13 of the old Act of 1870 which ran as follows : "In determining the amount of compensation the Collector

shall take into consideration the matters mentioned in section 24 and shall not take into consideration any of the matter mentioned in section 25."

Procedure of Collector's valuation :—This section lays down the procedure to be followed by the Collector in this enquiry as to the valuation of the land. A proceeding under sec. 11 of the L. A. Act is not a judicial proceeding and as to valuation the Collector is not limited to evidence taken before the opposite party or disclosed at the enquiry, (a). The acquiring officer may take evidence but he is not bound to do so and his proceedings are administrative rather than judicial, (b).

Duty of the Collector :—The Judicial Committee of the Privy Council in *Ezra v. Secretary of State*, (c), has observed that with regard to the second enquiry directed by the Act as to the value of the land taken thereunder the duty of the Collector under the section relating thereto is to fix the sum which in his best judgment is the value. The Collector has, under section 11, to enquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation he has to apportion the compensation among all the persons known or believed to be interested in the land of whose claim he has information, (d). His ultimate duty is not to conclude by his so-called award but to fix the sum which in his best judgment is the value and should be offered. *Ezra v. Secretary of State*, supra.

Limited powers of the Collector :—The L. A. Act gives an acquiring officer very wide discretion as to the scope of enquiry and as to the materials which he may take into consideration. It requires him to make an award as to the matters mentioned in section 11 and to have regard to the provisions of sections 23 and 24 in determining the amount of compensation as laid down in section 15. Sections 11, 15 and 23 must be read with sections 30 and 31, (e). The matters to be considered by the Collector, in determining the market value of the land acquired, are the same as are to be considered by the Court and the matters to be considered both by the Collector and the Court are laid down in sections 23 and 24. The intention of section 23 taken as a whole is to provide complete indemnity to a person whose land is compulsorily acquired. The sub-clauses give effect to this principle by enumerating the heads under which the compensation may be awarded (f). In determining the amount of compensation he is ordered to take into consideration the matters mentioned in section 24 of Act X of 1870, now section 23 of Act I of 1894, one of which is the market value at the time of awarding the compensation of the land. It is, therefore, obvious that the offer of one rupee compensation was not in accordance with the duties of Collector under this section, and it would

(a) *Gokul Krishna Banerjee v. Secy. of State*, 137 I. C. 116 : 1932 A. I. R. (Pat.) 134.

(b) *Asstt. Development Officer, Bombay v. Tayaballi Allibhoy Bohori*, 35 Bom. L. R. 763 : 1933 A. I. R. (B) 361.

(c) *Ezra v. Secretary of State*, 32 I. A. 93, : 32 Cal. 605 : 9 C. W. N. 545.

(d) *In the matter of Pestonji Jehangir*, 37 Bom. 76 : 14 Bom. L. R. 507 : 15 I. C. 771.

(e) *Government of Bombay v. Esuffali Salebhoy*, 12 Bom. L. R. 34 : 5 I. C. 621.

(f) *Baroda Prosad Dey v. Secretary of State*, 25 C. W. N. 677.

be altogether wrong to treat one rupee as the amount of compensation determined under section 13, now section 11, (g).

Matters to be considered in determining the compensation :—(See Notes under sections 23 and 24, *post*).

Taking Possession

Power to take possession

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon ¹[vest absolutely in the ²Government], free from all encumbrances.

State Amendments

Mysore.—*The Land Acquisition (Mysore Extension and Amendment) Act No. 17 of 1961.*

(See under Part III, Chapter X, Mysore).

Legislative history :—Section 16 of the old Act X of 1870 ran as follows :

“When the Collector has made an award under section 14, or a reference to the Court under section 15, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.”

Notes

Vests in the Government not in the Crown :—The word “Crown” has been substituted by the word “Government” by the Government of India (Adaptation of Indian Laws) Order, 1937. Since the Constitution of India has come into force on 26th January, 1950, it is no longer the “Crown” in whom the property acquired vests, but it vests in the Union or the State for which the property is acquired. Art. 298 (2) of the Constitution of India provides, “All property acquired for the purposes of the Union or of a State shall vest in the Union or such a State, as the case may be.” It follows, therefore, that the property acquired under the Land Acquisition Act no longer vests in the “Crown” but vests in the Union or a State as the case may be.

Scope of the section :—Once the Collector makes his award under Sn. 11 he can take possession of the land. Two consequences follow from this taking of possession namely :

- (1) Vesting of the land absolutely in the Government ;
- (2) Such vesting is free from all encumbrances.

In a proceeding under the Land Acquisition Act, title to the land does not pass to the State as soon as award under Sn. 11 is made and filed under Sn.

(g) *Luchmeswar Singh v. Municipality of Darbhanga*, 18 Cal. 99.

¹ Substituted by Adaptation of Laws Order 1937.

² Substituted by Adaptation of Laws, Order 1950.

12 but it is deferred till possession is taken under Sn. 16 of the Act, (h). So where a house fell down after notification but prior to award or taking of possession, there can be no claim for compensation (i).

No vesting until possession :—Even if there was a notification for acquisition, until possession is taken by the Collector, the owner's title is not disturbed and there is no vesting of title in the Government notwithstanding that there has been an award, (j).

Right of entry :—Ordinarily after the award has been made under s. 11 and notice of the award has been given under section 12(2), the only thing necessary is to complete the acquisition and vest the property absolutely in Government is the taking of possession by the Collector. In the case of compulsory taking, the right of the entry under section 85 of the Lands Clauses Act, 1845, is a right not independent of but consequent upon the landowner and the promoters being placed, by the notice to treat, in a position analogous to that of a vendor and purchaser, (k).

Right of entry discretionary :—The Select Committee in their Report dated 2nd February, 1893 made the following remarks—"Section 8 of the Bill amends sec. 16 of the Act by requiring the Collector to take possession of the land immediately after he has made the award, with a proviso permitting him to leave the occupants in occupation until possession of the land is required, upon such condition as he and they may agree upon. We prefer the terms of the existing law, which leave to the Collector discretion as to immediate entry upon the land, and have changed section 8 of the Bill accordingly. Where the Collector postpones entry for any reason, he will ordinarily do so, as at present, on terms adjusted with the occupants ; and in a later section we have provided for compensation to the occupant if his profits should be any way bona fide reduced in the period between declaration under Sec. 6 and the Collector's entry into possession."

Obstruction to the delivery of possession :—Section 47 directs that if the Collector is opposed or impeded in taking possession under this Act, of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the collector. The penalty for offering resistance to the taking of any property by the lawful authority of the public servant is also provided by sections. 183 and 186 of the Indian Penal Code.

Extent of the Collector's possession and erroneous boundary :—The Collector under L. A. Act I of 1894, as has been seen, has only a limited jurisdiction. He is bound by the official gazette. The Collector cannot acquire or give possession of any land beyond the boundaries given in the

(h) *State of Bihar v. Dr. G. H. Grant*, A. I. R. 1960 Pat. 382 affirming A. I. R. 1939. Pat. 343, relied on A. I. R. 1933 Cal. 522.

(i) *Collector of Bilashpur v. Bakshi Ram*, A. I. R. 1961 H. P. 21, relied on A. I. R. 1950, S. C. 1208.

(j) *Benarasi Sha v. Lakshmi Rani De Sarkar*, I. L. R. (1966) 2 Cal. 662.

(k) *Tiverton Rail Co. v. Loosemore*, (1884), 9 App. Cas. 480.

declaration. If he does so he commits an act of trespass. He has to find out the precise quantity of land notified for acquisition within specified boundaries given in the declaration, value the same under the provisions of the Act and give possession accordingly. If the Local Government committed a mistake by giving an erroneous boundary the Collector cannot cure the mistake. If the land acquired be for Government purposes and if the Government takes possession of the land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private lands and is liable under the law of the country ; and so is a company if the acquisition is for its purposes. But such excess land cannot be valued and compensation awarded for it under the provisions of the Act, (l). When land actually taken up by Government is different from that mentioned in the declaration issued under the L. A. Act the proceedings of the Collector are void and there can be no valid reference to the Civil Court, (m).

Consequences following possession by the Collector :—1. The first effect of taking possession of the land by the Collector under the provisions of the L. A. Act is that the Government cannot withdraw from the acquisition of any land except in the case provided for in sec. 36 (temporary occupation). Sec. 48 provides that except in the case provided for in s. 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

The taking of possession is the immediate consequence of the award under Sn. 11, (n).

2. The second and the most important legal consequence that follows upon taking possession of the land by the Collector under the provisions of the L. A. Act, is that it vests absolutely in the Crown free from all encumbrances, that is to say, no person shall have any right to pursue his remedies against the land in the hands of the Government or the company for whom it is acquired under the provisions of the L. A. Act I of 1894. This is an instance of the exception to the general rule that "a transfer of property passes forthwith to the transferee all the interests which the transferor is then *capable of passing* in the property and in the legal incidents thereof. Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer and all things attached to the earth", (section 8 of the Transfer of Property Act IV of 1882) which is equivalent to the well-known maxim "that a transferor cannot confer greater title to the transferee than he himself had in the same." This principle does not apply in the case of lands acquired by the Government under the provisions of the Land Acquisition Act I of 1894. It should be borne in mind that what has to be acquired in every case under the L. A. Act is the aggregate of rights in the lands and not merely some subsidiary right such as that of a tenant (o). The correct rule of valuation to be

(l) *Harish Chandra Neogy v. The Secretary of State*, 11 C. W. N. 875.

(m) *Gajendra Sahu v. Secretary of State*, 8 C. L. J. 39.

(n) *Nadu Chand Mullick v. The State of West Bengal*, A. I. R. 1952 Cal. 67.

(o) *Babujan v. Secretary of State*, 4 C. L. J. 256.

observed is to value the land in the first instance including all interests in it, (p).

In *Collector of 24 Parganas v. Nabin Chandra Ghose*, (q). The High Court observed : "The Railway Company with the aid of Government acquired the land under the provisions of Act VI of 1857 ; and by the 8th section of that Act, the land taken became vested in the Government, and afterwards in the Railway Company, absolutely, and free from every right or interest therein, of whatever description, possessed by the former proprietors or other persons. All rights before existing whether of passage or of any other kind, absolutely ceased upon the acquisition of the land for the railway ; and no right of way afterwards arose, or was continued merely because there remained no mode of access to the land on the north, otherwise than by crossing line. The express provisions of the law are not consistent with the existence of such right." When the Collector made the award, he could take possession of the land which thereupon vested absolutely in the Government free from all encumbrances ; and the acquisition and the resulting vesting is equally effective and complete in the case of acquisition undertaken by the Government on the application of the Municipal Commissioners under the City of Bombay Municipal Act so as to vest the property in the Corporation instead of in the Government on the payment of compensation awarded ; and that no transfer from the Government to the Corporation was needed, (r).

"The word 'vest' has not got a fixed connotation meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title or in possession or in a limited sense as indicated in the context in which it may have been used in a particular piece of legislationthe word is of variable import....for example under Sn. 56 of the Provincial Insolvency Act the property vests in the Receiver....on the other hand sections 16 and 17 of the Land Acquisition Act provide that the property so acquired upon the happening of certain events shall vest absolutely in the Government free from encumbrances, without any condition or limitations as to title or possession." (s).

When lands were acquired under Act 6 of 1857, the entire 'estate, right, title and interest' subsisting thereon became extinguished and the land vested in the Government absolutely free from forass tenure. The word 'encumbrance' in Sn. 16 can only mean interests in respect of which a compensation can be claimed. The Government is not a 'person interested' within the meaning of Sn. 3(b) and the Act does not contemplate its interest

(p) *Raja of Pittapuram v. Revenue Divisional Officer, Coconada*, 42 Mad. 644 ; 26 M. L. J. 454 : 51 I. C. 656.

(q) *Collector of 24 Parganas v. Nabin Chandra Ghose*, 3 W. R. 27.

(r) *Municipal Commissioners for the City of Bombay v. M. Damodar Brothers*, 45 Bom. 725.

(s) *Fruit and Vegetable Merchants' Union v. Improvement Trust, Delhi*, A. I. R. 1957 S. C. 334.

being valued or compensation being awarded therefor (t). Customary rights also get extinguished, (u).

When land does not vest :—If the provisions of the L. A. Act are not strictly complied with but are made a cloak for attempting to obtain an indefeasible title under the guise of a public purpose, the proceedings do not operate towards the creation of a valid title to the land in Government (v).

Land once vested cannot be divested :—When the Collector makes an award under section 11 of the L. A. Act and then takes possession of the land, the effect under section 16 is that the land vests absolutely in the Government free from encumbrances and that a subsequent offer by a late owner to make a gift of the land to Government abandoning the right to compensation, although accepted by Government, did not amount to a re-vesting of the land in the late owner as on withdrawal under section 48, (w). It was urged on behalf of the claimants that the government having acquired land for a particular purpose are not entitled to use any portion for some other purpose. It was held that "the law seems to be that after acquisition the new owners have the ordinary rights of properties and may use their lands as they think fit for any purpose which does not infringe the rights of others and is not inconsistent with the purposes sanctioned by the statute under which the lands have been taken (x). There are, however, restrictions in the English law which do not find place in the Indian law. A municipality is justified in using the land for any purpose for which the statute authorised it to use land although not for which it was professedly taken. The land in the above case was acquired for public ghat, but the Municipality made a ghat upon part and the rest was used for a market," But contrary view has been taken in *Gadadhar's case* (z), where it has been held that acquisition for undeclared purpose where some purpose have been declared, is invalid.

Notice immaterial for vesting :—Under section 16 of the L. A. Act the making of an award and taking possession of land thereunder vests the property absolutely in the Government and the mere fact that notice has not been served on the occupier of the land in accordance with sections 9(3) and 45 of the Act does not render the award or subsequent proceedings void nor does it prevent the vesting of the property in Government (a).

Remedy of a person who has no notice of Award :—The remedy of a complainant who has had notice of an award under section 12 of the Land Acquisition Act is to apply for a reference under section 18. No other remedy is provided by the Act (a). The L. A. Act, creates a special jurisdiction and

(t) *Collector of Bombay v. Nusserwanji*, A. I. R. 1955, S. C. 298, distinguishing A. I. R. 1951, S. C. 469.

(u) *Drapadi v. S. K. Dutt*, A. I. R. 1957, All. 895.

(v) *Luchmeswar Singh v. Chairman Darbhanga Municipality*, 18 Cal. 99; *Ponnaia v. Secretary of State*, 97 I. C. 471 : (1926) A. I. R. (M) 1099.

(w) *Secretary of State v. The Chettyar Firm*, 4 Rangoon 291 : 98 I. C. 323.

(x) *Secretary of State v. Amulya Charan Banerjee*, 104, I. C. 129 : 1927 A. I. R. (C) 874.

(y) *Luchmeswar Singh v. Chairman, Darbhanga Municipality*, 18 Cal. 99.

(z) *Gadadhar v. State of West Bengal*, 67 C. W. N. 460.

(a) *Kasturi Pillai v. Municipal Council, Erode*, 43 Mad. 280 : 37 M. L. J. 618 : 26 M. L. T. 268 : 10 L. W. 336 ; 53 I. C. 646.

provides a special remedy and ordinarily when jurisdiction has been conferred upon a special court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive. Where by an Act of the legislature powers are given to any person for a public purpose for which an individual, may receive injury, if the mode of injury is pointed out by the statute, the ordinary jurisdiction of the civil court is ousted and in case of injury the party cannot proceed by action. The proviso to section 31(2) which provides that nothing shall affect the liability of any person who may receive the whole or any part of the compensation awarded under this Act to pay the same to the person lawfully entitled thereto, is of limited application and applies only to cases where the person is under a disability or is not served with notice of its proceedings before the Collector. Where a person had no notice of the apportionment proceedings under the L. A. Act he can not be bound by the award (b). A person claiming a portion of compensation awarded by the Collector in L. A. proceedings, is entitled to maintain a civil suit to establish his claims, where the question of apportionment of the compensation money has not been determined by the Collector (c).

The above view is quite in accord with the view in England where promoters who have entered on land in accordance with provisions of section 85 of the Lands Clauses Act (1845), are protected by their statutory powers and no action for the recovery of such lands can be brought against them by the owners (d). Such owners are not entitled to any equitable relief, but must avail themselves of the procedure provided in sections 22, 68 and 121 of the Lands Clauses Act (1845), (e).

If the promoters do not strictly comply with the provisions of section 85, they are in the position of trespassers and can be proceeded against as such (f), and the High Court has power, on the trial of an action for wrongful entry, to make a declaration as to the plaintiff's interest in the land in question instead of remitting him to the procedure under the Lands Clauses Act (1845), (g).

In *Birendra Nath Banerjea v. Mrityunjoy Roy* (h), it has been held that three persons on whom no notices under sections 9 and 12(2) were served, are entitled to maintain a suit for share of the compensation money. (See notes under s. 18 under heading 'No suit lies against Collector's award' etc.).

Incumbrance what it means :—The word 'incumbrance' has not been defined in the Land Acquisition Act. In the shorter Oxford English

(b) *Saibesh Chandra Sirkar v. Bejoy Chand Mahatab*, 26 C. W. N. 506 : 65 I. C. 711 ; A. I. R. 1922 Cal. 4.

(c) *Chandu Lal v. Ladli Begum*, 18 P. W. R. 1919 : 49 I. C. 657.

(d) *Doe d. Armstead v. North Stafford Rail Co.*, (1851) 16 Q. B. 526 : *Doe d. Hudson v. Leeds and Bradford Rail Co.* (1851) 16 Q. B. 536 ; *Worsely v. South Devon Rail Co.* (1851) 16 Q. B. 59.

(e) *Tiverton Rail Co. v. Loosemore* (1884), App. Cas. 499 ; *Adams v. London & Blackwell Rail Co.*, 19 L. J. Ch. 557.

(f) *Perks v. Wycomb Rail Co.*, (1882) 3 Giff. 662 : 10, W. R. 788.

(g) *Birmingham & District Land Coy. v. London & N. W. Rail Co.*, (1888) 36 Ch. D. 650.

(h) *Birendra Nath Banerjea v. Mrityunjoy Roy*, 66 C. W. N. 191,

Dictionary, Vol. I, p. 606 under the heading "Encumbrance-law" it is stated that the word 'incumbrance' means a claim, lien, liability attached to property as a mortgage etc. (Wharton). The word "incumbrances" means some burden created by acts or omissions of human being. It does not mean a burden or obligation created by nature. Accordingly, acquisition of a portion of bed of a natural stream under the L. A. Act does not, under s. 16 thereof extinguish the burden lying on the acquired plot to pass on the water to lower owners without material diminution. Apart from any statue, there can be no right of private property in the running water of a natural stream which passes on to the land of other owners. The enjoyment of such water is only usufructuary and not absolute. The right arises not from ownership of the soil under the stream but from the right of access to it which riparian owners have by the law of nature. Facts of nature constitute the foundation of the right and the law recognises and follows it in every part of the stream so that one particular owner can not claim to appropriate the whole of the water. Accordingly, the owner of a portion of a bed of a natural stream can not appropriate or divert absolutely, the whole of the water on the footing that as soon as it reaches his land it becomes his private property (i).

Fishery not an encumbrance :—A right to several fishery is not benefit arising out of land, nor is it an incumbrance on the land ; such a right is not extinguished under section 16 of the L. A. Act by the compulsory acquisition of the subjacent land (j).

Encumbrance includes easements :—The word, encumbrances in sec. 16 of the L. A. Act includes easements. Under the L. A. Act, 1870, it has been held that where the taking of a part of a person's land for public purposes, e. g., for building a hospital, cuts off all access to the rest of the land, he will be entitled to a right of way over the land taken which can only be effected by giving him compensation for the remaining portion of the land. Where therefore, land is acquired by Government under the provisions of the L. A. Act, the land vests absolutely in the Government under sec. 16 of the Act free from all existing easements. Nor can any fresh easement arise in respect of the land acquired by virtue of the severance of such lands from other land belonging to the persons from whom the land has been acquired. Where a person, a portion of whose land has been acquired by Government under the provisions of the L. A. Act, has been awarded compensation, in respect of severance of the land acquired from other land belonging to him, he cannot claim to have a right of way over the land acquired as an easement of necessity (k).. Land taken under the Act is taken discharged of all easements and the loss of easement must be taken into account in assessing

(i) *Baraset Basirhat Light Railway Co. v. Nrisingha Charan Nandi Chowdhury*, 47. C. W. N. 130 : I. L. R. (1943), 1 Cal. 172 : 76 C. L. J. 67 : 206 I. C. 84 : A. I. R. (1943) Cal. 128.

(j) *Brojendra Kishore Roychoudhury v. Governor-General-of-India-in-Council*. 48 C. W. N. 537 : A. I. R. (1944) Cal. 315.

(k) *Mitra v. Municipal Committee, Lahore*, 6 Lah. 329 : 89 I. C. 658 : (1925) A. I. R. (Lah), 523.

compensation for injurious affection (l). Where a servient tenement is acquired under the L. A. Act, easement rights over the same which are encumbrances within the meaning of section 16 are extinguished, and when easement right is the right to receive light and air, the owner of the dominant tenement can no longer, after such acquisition complain of infringement of the right, in as much as, there can be no right to receive light and air across another's land apart from a right of easement and thus no basis even for a civil action (m). The Collector in his award cannot keep the easements alive on the land acquired, as that would be against the express provision of the statute, (n).

The right for drainage, that is for the water, which is on or comes on to the land of a person to flow over certain other ground is a right of easement ; and it comes to an end under s. 16 of the Act as soon as the Collector makes an award under s. 11 of the Act (o).

Encumbrance includes customary rights :—It is difficult to see why a customary right of way or similar right should not come within the meaning of the word 'encumbrance'. The whole object of the L. A. Act is to enable the Government to acquire land for public purpose and to use such land in any way which may be convenient or necessary for the public in general. If rights of way and other customary rights were not destroyed by acquisition it would often be impossible for the Government to acquire and use land in such a way as might be necessary. It has been suggested that these customary rights should not be destroyed by acquisition because there is no method of compensating the persons who might exercise the right. A number of the public would not get damage for a private encroachment on a public right of this nature unless he could show that in some way he was especially affected and similarly it seems that if he was especially affected it might be possible for him to obtain compensation from the Collector under the provisions of L. A. Act. There is no doubt that the word encumbrances is sufficiently wide to cover a customary right. In *The Bombay Corporation v. The Great Indian Peninsular Railway* (p), it was conceded before their Lordships of the Privy Council that acquisition of land under the L. A. Act would destroy a right of passage. There is no authority for the proposition that a customary right as distinguished from an easement is not included within the meaning of the word 'encumbrance'.

Encumbrance includes leases and under-leases :—On the compulsory acquisition of a premises the lease thereof terminates and on such determination of the lease the monthly tenancies of the under-lessees also come to an end with the result that the under-lessees thereafter remain on the premises

(l) *Taylor v. Collector of Purnea*, 14 Cal. 423.

(m) *Rashidalladina v. Jivandas Khemji*, I. L. R. (1942) 1 Cal. 448 ; 46 C. W. N. 136 ; A. I. R. (1943) Cal. 35 : 204 I. C. 370.

(n) *Jivandas Khimji v. Narbada Bai*, A. I. R. 1959 Cal. 519.

(o) *Abdul Karim Khan v. The Managing Committee, George High School*, 1936 A. L. J. 1160 : 1936 A. W. R. 1011. 1936 A. I. R. (All) 879.

(p) *The Bombay Corpn. v. The G.I. P. Ry.* 43 I. A. 310.

merely as tenants on sufferance and are not entitled to a month's notice (g).

Encumbrance includes a mortgagee's lien :—The mortgage lien of a mortgagee of a property acquired under the L. A. Act does not follow with the lands in the hands of Government by whom it is acquired or into the hands of Company money into which the property is converted and the Government or the Company for whom the land is acquired gets it free from the lien of a mortgagee (r). In England when money was paid into Court under the compulsory powers of sec. 69 of the Lands Clauses Act (1845) as compensation for lands taken which were settled, etc., or subject to encumbrances, Steward V. C. said : "I think where money has been paid into Court by the real estate having been taken under the compulsory powers, and remains in court, it is to be held as money or personal estate in the hands of the Court impressed with the trusts of real estate." Again he said : "The money in Court is to be considered for the purpose of the question as to who was entitled to it, real estate", (s). The land when acquired under the L. A. Act is vested in and is in the possession of the Government discharged of all encumbrances therefrom. The rights of parties to the land and to any mortgage on or interest in it are transferred to the compensation money. The money paid into the treasury is to be considered as money or immovable property impressed with the trusts and obligations of the immovable property which it represents (t). When property subject to a mortgage acquired by Government under the L. A. Act and the whole compensation amount is paid to the mortgagor without notice of the mortgage, the mortgagee may claim a reference under section 18 to the civil court and after the expiration of six months, he is confined by the Act to a suit under section 31 against the persons to whom the money was wrongly paid. There is no other remedy at all either against the Secretary of State or the L. A. Collector (u).

Encumbrance includes widow's interest :—Where land which was taken up by Government under the L. A. Act for public purposes was held at the time by two widows holding the usual Hindu widow's life estate therein, it was held that the compensation awarded for such land should not be paid to the widows but should be invested in land to be held on similar terms (v). With the passing of the Hindu Succession Act 1956 women have acquired full rights, the reversionary theory being abrogated.

Encumbrance includes interest in trust property :—Land dedicated to an idol or to religious and charitable purposes is land belonging to the shebait or trustee who has no power to alienate the same and under Sec. 31 the Collector has to deposit the amount of compensation in the court to which

(g) *Municipal Commissioners for the City of Bombay v. M. Damodar Brothers*, 45 Bom. 725.

(r) *Jotoni Chowdhurani v. Amar Saha*, 13 C. W. N. 350 : 6 C. L. J. 745.

(s) *In Re Stewart's Trusts*, 22 L. J. (N. S.) 369.

(t) *Venkata Viraraghavayyanagar v. Krishnaswami Ayangar*, 6 Mad. 344.

(u) *Secretary of State v. Kuppusami Chetty*, 46 M. L. J. 36 : 1924 M. W. N. 138 :

78 I. C. 82 : (1924) A. I. R. (M) 521. *Vide* also sec. 73. Transfer of Property Act.

(v) *Sheoratan Rai v. Mohri*, A. W. N. (1899) 96 ; *Sheo Prasad Singh v. Jaleha Kumwar*, 24 All. 189.

a reference under sec. 18 would lie and the land would vest in the Government free from the lien or claim of the trustee or shebait the same being transferred to the compensation money in deposit in court (w).

Incumbrance does not include burden of passing water in a natural stream : —“It is generally laid down in the text books and in the earlier reported cases that the right of private property in a water course is derived as a corporeal right and hereditament from or is embraced in the ownership of the soil over which it naturally passes, according to the well-known maxim *cujus est solum, ejus est usque ad coelum*.” “A water course” says Woolrych, “may be either a real or an incorporeal hereditament. If by grant, prescription, or otherwise, one should have an easement of this kind in the land of another person it would partake of the latter quality ; but if the water flow over the party’s own land, although indeed it cannot be claimed as water, yet it is in effect identified with the realty, because it passess over the soil and *cujus est solum, ejus est usque ad coelum*.” “An action cannot” says Blackstone “be brought to recover the possession of water by the name of water only, but it must be brought in respect of the land which lies at the bottom and the description of it must be so much land covered with water.” From this identification of the land with the water a grant of a field or meadow will carry all the timber and water standing and being thereupon. This doctrine is supported by the modern authority with regard to standing and percolating water and also, it would appear, with regard to running water which rises and remains for the whole of its course on the land of a single owner, for in such cases the water is the absolute property of such owner, and no one is entitled to share the use of it with him ; but with regard to natural streams flowing through adjoining lands, the enjoyment of which is only usufructuary and not absolute, the right to use the water has been held in modern cases not to arise from the ownership of the soil on the right of access to it which land-owners on its banks have by the law of nature.” Coulson and Forbes : Law of Waters, 4th Ed. p. 74. “Water flowing in a known channel or percolating through the soil is not, except in the case mentioned below, the subject of property or capable of being granted to any body, for flowing water is *public juris*, not in the sense that it is *bonum vacans*, to which the first occupant can acquire an exclusive use, but in the sense that it is public and common to all who have a right of access thereto.

“The exceptions to the rule are as follows :—(1) Where Parliament has declared otherwise ; (2) where the water flows to a person’s property and there is no one to share with him the use of the water, or to call him to account for any use he may make of it ; (3) where flowing water is appropriated or taken into possession, but the right of property exists during such possession only ; and (4) where water is supplied by a water company even though in the consumer’s own pipes.” *Halsbury’s Laws of England, Hailsham Ed. Vol. 33. Art, 845*. “Every owner of land adjacent to water running in a defined natural channel has at common law a right to have a continuance of the accustomed flow of water, both as regards quantity.

This right which is generally called a natural right arising *jure nature* is an incident arising by law from the ownership of each plot of land over or through which the water passes, with the result that there is mutual benefit to and mutual burden upon each owner. Consequently, one particular owner cannot in general appropriate the whole of the water, for not only has his land the advantage of being washed by the stream, but the lands of others have a similar advantage which must be preserved. Since the facts of nature constitute the foundation of his right, the law recognises and follows the course of nature in every part of the stream. In the same manner as a riparian owner is bound to pay regard to the effect which the result of his user of the stream has upon the stream affecting the lands of others, so has he also a corresponding mutual benefit from a similar duty imposed upon other owners. And each riparian owner has a natural right, subject to the similar rights of other riparian owners, to the reasonable enjoyment of the water and a right of action in respect of any unreasonable and therefore unauthorised use of this common benefit." *Halsbury's Laws of England. Hailsham Ed. V. 11. Art. 620.* From these authorities it is clear that the water which comes over a portion of the bed of a Khal, the proprietary right of which is vested in a person by the proceedings under the L. A. Act, is not and cannot be his private property and he has no right to the exclusive use of the said water (x).

Effect of Collector's possession on revenue sales :—When the Collector takes possession of certain lands under a tauzi acquired under the L. A. Act after making an award which allows abatement of Government revenue for the lands acquired from the kist previous to taking possession and on a subsequent date the tauzi is sold for arrears of revenue, the auction-purchaser does not purchase the acquired lands at all and consequently it is the original proprietor and not the auction-purchaser who is entitled to the compensation in respect of the proprietary interest in the lands, although the date of default to which auction-purchaser's title relates back under the law may be prior to the acquisition.

Under sec. 16 of the L. A. Act, on the Collector's taking possession of land after making an award under sec. 11, the land vests absolutely in Government free from all encumbrances. But where the Collector's award is made and possession taken after the revenue-sale, the auction-purchaser is entitled to the compensation, (y).

Special powers in cases of urgency

17. (1) In cases of urgency, whenever the ¹[appropriate Government] so directs, the Collector, though no such award

(x) *B. B. L. Ry. Co. Ltd. v. Nrisinha*, 47 C. W. N. 130.

(y) *Nrisinha Charan Nandi Choudhury v. Nagendra Bala Deby*, 60 Cal. 281 : 37 C. W. N. 14 : 144 I. C. 743 : 1933 A. I. R. (C) 522.

¹ These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, and A. O. 1950 for "Provincial Government".

has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon ²[vest absolutely in the ²Government], free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the ¹[appropriate Government], enter upon and take possession of such land, which shall thereupon ³[vest absolutely in the ³(Government)] free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24 ; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

¹(4) In the case of any land to which, in the opinion of the ¹[appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the ¹[appropriate Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after

² These words were substituted for the words "vest absolutely in the Government", *ibid.*

³ Subs. by the A. O. 1950 for "Crown."

¹ These words were substituted for the words "Local Governments" by the Government of India (Adaptation of Indian Laws) Order, 1937 and A. O. 1950 for "Provincial Government".

⁴ This sub-section was added by s. 6 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

the publication of the notification under section 4, sub-section (1)].

State Amendments

1. **Madras.**—(i) *The Madras City Improvement Trust Act No. XXXVII of 1950*. S. 738, Schedule.

[See under Part III, Chapter IX, Madras (1)].

(ii) *Madras Act XXI of 1948*, S. 2 (4-1-49).

[See under Part III, Chapter IX, Madras (2)].

2. **Calcutta (Improvement)**—*Bengal Act V of 1911*, sec. 71 and sch. para 4 (2-1-12).

[See under Part III, Chapter XV, W. B. (2) also see s. 17-A of Bengal Act 5 of 1911 under Part III, Chapter XV, W. B. (2)].

3. **Howrah.**—*Howrah Improvement Act 1956*.

[See under Part I, Chapter XV, W. B. (3)].

4. **Andhra Pradesh.**—*Andhra Pradesh Act XXXII of 1956*, sec. 3, (8-11-56).

(1) same as that made by Madras Act XXI of 1948, sec. 2.

(2) Sn. 17 was extended to Nagarjuna Sagar Project area.

Andhra Pradesh.—*By Andh. Pra. Act XX of 1959*.

In clause (b) (ii) (B) the following words, figures and brackets shall be added at the end, namely:—

“the Hyderabad Co-operative Societies Act, 1952 (Hyderabad Act XVI of 1952), or ;”

5. **Bihar.**—1. *The Land Acquisition Bihar (Amendment) Act XI of 1961*, sec. 9

For section 17 of the said Act the following section shall be substituted, namely:

17. *Special powers in cases of urgency.*—(1) In cases of urgency whenever the appropriate Government so directs, the Collector, though no award has been made, may on the expiration of fifteen days from the publication of the declaration mentioned in section 6, or with the consent in writing of the persons interested at any time after the publication of the notification under section 4 in the village in which the land is situated, take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

Explanation.—This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees.

(2) Whenever it becomes necessary for the purpose of protecting life or property from flood, erosion or other natural calamities or for the maintenance of communication other than a railway communication or it becomes necessary for any Railway Administration (other than the Railway Administration of the Union), owing to any sudden change in the channel of any navigable river or other unforeseen emergency for the maintenance of their traffic or for the purpose of making thereon a river side or ghat station, or providing convenient connection with or access to any such

station to acquire immediate possession of any land, the Collector may, immediately after the publication of the declaration mentioned in section 6 or, with the consent in writing of the person interested, given in the presence of headman of the village or Mukhiya and Sarpanch as defined in the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), at any time after the publication of the notification under section 4 in the village in which the land is situated and with the previous sanction of the appropriate Government, enter upon and take possession of such land which shall thereupon vest absolutely in the Government free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops on such land and for any other damage sustained by them caused by such sudden dispossession and not accepted in section 24 ; and in case such offer is not accepted, the value of such crops and the amount of such other damage shall be allowed in awarding compensation for the land under the provisions herein contained.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the provisions of section 5A shall not apply where the appropriate Government so directs or where possession of the land has been taken with the consent of the person interested.

2. *Bihar Town Planning and Improvement Trust Act 1951*.—S. 17-A. Same as in Madras excepting that in place of 'Board' it is 'Trust'.

3. *Bihar Act XXXV of 1951, S. 71, schedule, Para 5.*

[See under Part III, Chapter III, Bihar (7)].

6. *Gujarat—The Land Acquisition (Gujarat Unification and Amendment) Act 20 of 1915.*

[See under Part III, Chapter IV-B, Gujarat (2)].

7. *Maharashtra*.—1. *By Bombay Act VIII of 1958.*

By Bombay Act XXXV of 1953, s. 7 :—(i) in sub-section (1).

after the words "appropriate Government" insert the words "or the Commissioner."

In sub-section (2) (a) after the words "access to any such station" the following words shall be inserted, namely :—

"or whenever owing to a like emergency or owing to breaches or other unforeseen events causing damage to roads, rivers, channels or tanks, it becomes necessary for the State Government to acquire immediate possession of any land for the purpose of maintaining road communication or irrigation or water supply service, as the case may be."

Cl. (b) after the words "appropriate Government" insert the words "or, as the case may be, of the Commissioner" ;

(iii) in sub-section (4)—

(a) after the words “appropriate Government” where they occur in two places, the words “or, as the case may be, of the Commissioner” shall be *inserted*.

(b) For the words “it does so direct” *substitute* the words “it or he does so direct”.

The Land Acquisition (Maharashtra Amendment Validation of Certain Proceedings for Acquisition of Lands) Act XXIV of 1965 :—

4. In section 17 of the principal Act after sub-section (4) the following Explanation shall be and shall be deemed always to have been *inserted* namely.—

Explanation.—It shall not be necessary for the purpose of sub-section (1) for taking possession of any waste or arable land, to state separately which lands are waste and which are arable.

8. **Madhya Pradesh.**—*By C. P. and Berar Act XX of 1949.*

[See under Part III, Chapter VIII, M. P. (6)].

Madhya Pradesh.—*By M. P. Act V of 1956 Sec. 3 :—*

After section 17 the following section shall be inserted, namely—

“17A. **Special powers in relation to building sites in Bhopal area :—**

Whenever it appears to the State Government that it is urgently necessary to acquire immediate possession of any building site ‘together with the building, if any, standing thereon) situate in Bhopal area, the State Government may issue a direction accordingly to the Collector and thereupon the provisions of section 17 shall in all respects apply in the case of such site as they apply in the case of waste or arable land :

Provided that the Collector shall not take possession of any building or part of a building under this section without giving to the occupier thereof two months’ notice of his intention so to do in order to enable such occupier to vacate the building without unnecessary inconvenience.”

9. **Mysore.**—*The Land Acquisition (Mysore Extension and Amendment) Act 17 of 1964.*

[See under Part III, Chapter X, Mysore].

10. **Nagpur (City).**—*C. P. Act XXXVI of 1936, S. 61 and Schedule.*

[See under Part III, Chapter VIII, M. P. (4)].

11. **Orissa.**—*Orissa Act XIX of 1959, S. 3.*

[See under Part III, Chapter XI, Orissa (2)].

12. **Punjab.**—(1) *By Punjab Act II of 1954 as amended by Punjab Acts XVII of 1956 and XLVII of 1956—*

(i) to sub-section (1) the following Explanation shall be added—

“*Explanation.*—The sub-section shall apply to any waste or arable land, notwithstanding the existence therein of scattered trees or temporary structures such as huts, pandals or sheds.”

(ii) for sub-section (2) the following shall be substituted namely :—

“(2) In the following cases, that is to say—

(a) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river—

side or ghat station or of providing convenient connection with or access to any such station ;

(b) Whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the purpose of any library or educational institution or for the construction, extension or improvement of any building or other structure in any village for the common use of the inhabitants of such village or any godown for any society registered under the Co-operative Societies Act, 1912 (Act II of 1912) or any dwelling house for the poor, or the construction of labour colonies or houses for any other class of people under a Government-sponsored Housing Scheme, or any irrigation or drainage channel or any well, or any public road ;

(c) Whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience."

(2) *Punjab Act IV of 1922, S. 59, Schedule, Cl. 2.*

(iii) In sub-section (3) after the figures "24" the words figures and letters "or section 24-A" shall be deemed to be *inserted*.

(iv) After sub-section (3), the following shall be deemed to be added, namely.—

(a) "(4) sub-sections (1) and (3) shall apply also to any area certified to be unhealthy by any Magistrate of the first class.

(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9 and shall hear without any avoidable delay any objections which may be urged by them.

(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession"—

(a) This sub-section (4) was added in 1922 before the addition of present sub-section (4) in the main Act, which was done in 1923.

13. **Uttar Pradesh.**—(i) *The Land Acquisition (U. P. Amendment) Act XXII of 1954* has inserted a new sub-section :—

"(1-A). The power to take possession under sub-section (1) may also be exercised in the case of land other than waste or arable land where the land is acquired for, in connection with sanitary improvements of any kind or planned development."

In view of the above provisions the Government of U. P., can direct that

Sec 5A will not apply to such cases because of the new provisions clause (4) of sec. 17 inserted by Act XXXVII of 1923 (Sec. 6), (a).

2. *U. P. Act X of 1945, S. 9 and Sch. para 2—*

(2) In its application for the acquisition of land by the State Government for road side or by the Nagar Mahapalika in sub-section (3) of section 17 after the fiture "24" the words, figures and letter "or section 24-A" shall be deemed to be *inserted*.

3. *U. P. Act II of 1959, S. 376 and Sch. II, para 5—*

(3) In its application for the acquisition of land by the Nagar Mahapalika, after sub-section (3) the following sub-section shall be deemed to be *added*, namely—

"(4-a) sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by the District Magistrate or a Magistrate of the first class to be unhealthy.

(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

(6) When proceedings have been taken under this section, for the acquisition of any land and any person sustains damage in consequence of being suddenly dispossessed of such land compensation shall be paid to such person for such dispossession."

(Note that there is sub-section (4) in the main Act, this figure (4-a) is therefore overlapping).

4. *Uttar Pradesh.—U. P. Act II of 1959, Sch. II, para 6—*

"17A. *Transfer of land to Mahapalika :—*

In every case referred to in Section 16 or section 17, The Collector shall upon payment of the cost of acquisition, make over charge of the land to the Mukhya Nagar Adhikari, and the land shall thereupon vest in the Mahapalika, subject to the liability of the Mahapalika, to pay any further costs which may be increased on account of its acquisition."

Notes

Sec. 17 of the old Act X of 1870 ran as follows :—"In cases of urgency, whenever the Local Government so directs, the Collector (though no such reference has been directed or award made) may on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of section 9, take possession of any waste or arable land needed for public purposes or for a company.

Such land shall thereupon vest absolutely in the Government free from all encumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land ; and in case offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provision herein contained."

(a) *Visheswar Shibacharya v. State of U. P.*, A. I. R. 1957, All 127.

Amendment

In sub-section (1) the word "Crown" has been substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 and by section 6 of the Land Acquisition (Amendment) Act, XXXVIII of 1923, sub-section (4) in section 17 of Act 1 of 1894, has been added.

Difference between secs. 16 and 17 :—Section 16 deals with taking possession of the land by the Collector after award and sec. 17 is applicable to the case of urgency only. Neither sec. 16 nor sec. 17 is applicable to the case of temporary occupation of the land under Part VI of the Act, as the proprietary right in the land taken up under these sections vests absolutely in the State. It is also necessary in regard to sec. 17 to observe that it applies to "waste" and 'arable' lands only and not to lands occupied by roads, tank, buildings, gardens, orchards, etc. *Board's Instructions* 103, *Bengal Land Acquisition Manual*, 1910, p. 89.

Reasons for the provision :—The Select Committee in their report dated 2nd February, 1893 observed as follows :—In section 17 of the Act which regulates the powers of the Collector in case of urgency, we think that the special damage for which the persons interested are to be compensated should be expressly defined as the damage incident to such sudden dispossession, and have by section 9 of the Bill added some words to the section accordingly."

"In section 17 we have introduced a sub-section permitting a shorter procedure under the direct orders of the Government in those cases where sudden changes in the course of a river require new land to be immediately taken for the convenience of the traffic or a railway."

Again the said Committee in their report dated 23rd March, 1893 remarked :—"We may explain in answer to a criticism by the Board of Revenue, Lower Provinces, that power was given to the Collector in section 17 to give special damages for sudden dispossession in order to cover injuries which sudden dispossession constantly entail. If, for instance, an owner is suddenly deprived of a pasture meadow, the market value of the meadow may not represent the actual amount of his loss. It may be impossible to find fresh pasture for his cattle in the emergency except at special charges. We think it right that the Collector should be empowered whenever he deprives a man suddenly of his land, to meet liberally the exceptional expenses to which the owner may be put.—*Gazette of India, Part V*, 1894.

Payment of compensation is not a condition precedent :—When an award has been made, possession of the land (if not already taken under sec. 17 of the Act) can be taken at once and need not be deferred till the compensation is paid, *Madras Board's S. O.* 90(14). The actual payment of the compensation awarded is not part of the Collector's award and is not necessary to the completion of it, (b).

Conditions precedent to the taking of possession :—In case of urgency with the previous sanction of the Local Government the Collector can take

possession under sec. 17 of any waste or arable land before taking possession under sub-sec. (f) sec. 17, the following preliminaries must be observed :— (1) the declaration under sec. 6 must have been published ; (2) the land must have been marked out and measured under sec. 8 ; (3) a general notice under sec. 9(1) have been published ; (4) there must be fifteen clear days between the publication of the general notice under sec. 9(1) and the taking of possession of the land, *Bengal L. A. Manual* 1910, p. 15 ; (5) That there is urgency which apparently is a subjective condition for the satisfaction of the State Government, and (6) that the land in question is waste or arable which is an objective condition ; (7) it must be shown that the Government was satisfied as to the urgency. Therefore the terms of s. 17(1) must be strictly complied with.

In respect of land acquired for or in connection with any sanitary improvement of planned development, if the other two requirements of sub-sec. (1) are present the Collector can take possession before making the award. Sn 17(4) is not invalid either on the ground that it is a case of unauthorised delegation or on the ground that it clothes the Government with arbitrary and unguided powers, (b-1).

The Collector will be entitled to take possession over the land other than those on which there are constructions, (b-2).

Therefore the Collector before taking possession will have to specify which portion according to him was arable and waste land, without specifying the portion it is not possible for him to take possession over the entire land, (b-2).

Where possession was taken by counting the 15 days from the declaration under s. 6 but that when the case came to court, the 15 days from the date of the notice under sec. 9 had elapsed, the Court should not interfere on account of slight irregularity (c). The determination of urgency is left to the Government and cannot be subject for judicial review (d).

What is arable land :—It is clear that the nature of the land is not a subjective matter like that of urgency. Literarally 'arable' means 'fit for cultivation'. So naturally it includes land not only fit for cultivation but also lands actually under cultivation. There were some conflicts but the Court held that the word 'arable' as used in section 17 of the L. A. Act includes not only those lands which are fit for cultivation but also those which have been actually brought under cultivation (e).

What is waste land :—The word 'waste' means 'unproductive', 'of no worth', 'lying unused' etc. Hence a land containing fruit bearing trees

(b-1) *Sarju Prosad Sahu v. The State of U. P.* : A. I. R. 1965 S. C. 1763.

(b-2) *Lakshmi Narayan v. The State of U. P.*, A. I. R. 1957, A. 816.

(c) *Thakur Bhim Singh v. State of Rajasthan*, 1955 R. L. W. 325 : I. L. R. (1955) 5 Raj. 24.

(d) *Iftekar Ahmed v. State of M. P.*, A. I. R. 1961 M. P. 140.

(e) *Ishwarlal Girdharilal Joshi v. State of Gujarat*. 1968 (1) S. C. A. 569 : *Kanailal v. State of West Bengal*, 73 C. W. N. 442 : *Sadaruddin v. Patwardhan*, A. I. R. 1955 Bom. 234 : *Ganesh Narayan v. Commissioner*, A. I. R. 1965 Bom. 92 : *Lakshmi v. State of Behar*, A. I. R. 1965 Pat. 400 : *Baldeo Singh v. State of U. P.* A. I. R. 1965 All. 433 : *Guntur Rama Lakshmi v. Govt. of Andhra Pradesh*, A. I. R. 1967, A. P. 280

can not be called a waste land. Waste lands are those which are desolate, uninhabited and uncultivated by reason of natural ravages, unfit for cultivation being marshy or stony etc. (f).

Compensation for sudden dispossession :—Section 85 of the Lands Clauses Act (1845) provides for the amount to be deposited if the promoters are desirous of entering upon and using lands before an agreement has been made or an award made or verdict given for the purchase money of compensation to be paid by them in respect of such land. It is also provided that in assessing the amount to be deposited under section 85, a surveyor should take into consideration not only the actual value of the land taken but also the amount of compensation to which an owner is entitled for severance or other injuries done to land held therewith, (g). To the same effect is section 6 of the Railway Clauses Act 1845 which enacts that the Company should make to the owners and occupiers of land and all other parties interested in any lands taken or used for the purposes of the Railway or injuriously affected by construction thereof full compensation for the value of the lands so taken or used, and for all damages sustained by such owners, occupiers and other parties by reason of the exercise of the powers vested in the Company by that or the special Act or any Act incorporated therewith.

From the Select Committee Report, dated 2-2-1893 it will appear that the Indian Legislature, in passing the Land Acquisition Act I of 1894, had in view the principle of assessing damages as followed in England. It expressly states in section 17 of the Act which regulates the powers of the Collector in cases of urgency—"We think that the special damages for which the persons interested are to be compensated, should be expressly defined as the damages incidental to such sudden dispossession, and have by section 9 of the Bill added some words to the section accordingly. we may explain, in answer to a criticism by the Board of Revenue L. P. that power was given to the Collector in section 17 to give special damages for sudden dispossession in order to cover injuries which sudden dispossessions constantly entail. If, for instance an owner is suddenly deprived of a pasture meadow the market value of the meadow may not represent the actual amount of his loss. It may be impossible to find fresh pasture for his cattle in the emergency except at special charges. We think that Collector should be empowered whenever he deprives a man suddenly of his land, to meet liberally the exceptional expenses to which the owner may be put." *Select Committee Report*, 23-3-93 ; *Gazette of India*, Part V, 1894.

Section 23, sub-section (1), cl. (ii) applies to the case provided for in section 17 when the Collector takes possession before award, (h).

Objection to the amount of damages offered :—In case the value of the land, crops and trees offered by Collector for taking possession of the land on the

(f) *Navnitlal v. State of Bombay*, A. I. R. 1961, Bom. 89. *Abdul Jabbar v. State of West Bengal*, I. L. R. (1967), 1 Cal. 157 (171)., see also *Ishwarlal v. State of Gujrat*, 1968 (1) S. C. A. 569.

(g) *Field v. Carnarvon Llanber's Rail Co.* (1868) 5 Eq. 190.

(h) *Sub-Collector Godavary v. Seragam Subbarayadu*, 30 Mad. 151 ; 16 M. L. J. 551.

ground of urgency before award, be not accepted as sufficient, the matter will have to be decided by reference under sections 18 and 19(c).

Compensation for waste and arable lands :—Proceedings under Sec. 17 cl. (1) can not be taken except for waste or arable lands. If they are not such lands the proceedings are illegal and invalid, (i).

Acquisition for public purpose when Part VII does not apply :—The essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne wholly or in part out of public funds. Hence an acquisition for a Company may also be made for a public purpose within the meaning of the Act if a part or whole of the cost of acquisition is met by public funds. In such a case it is not necessary to go through the procedure prescribed by Part VII of the Act, (j).

“If on the other hand, the acquisition for a Company is to be made entirely at the cost of the Company itself such an acquisition comes under Part VII. The work of construction of labor colonies under a Government Housing Scheme is a work of public utility. The Act is immune from attack under Art. 31(2) of the Constitution in view of provisions of cl. 5(a) of that Article” A. I. R. 1960 S. C. 1203 relied on. Reasoning in A. I. R. 1959, Punjab 535 was held erroneous, (k).

Vide notes under section 23, *infra*.

Remedy when Collector refuses to give an award :—If, after having taken possession of the land under section 17, before award, the Collector subsequently refuses to give an award on the ground that the land belonged to the Government, a suit would lie for a declaration that the land belonged to the plaintiff and for damages for breach of statutory duty on the Collector's part. The land having vested in the Government absolutely the plaintiffs were not entitled to recover possession but could only claim damages for breach of statutory duty on the part of Collector, (l).

Limitation for such suits :—The suit contemplated by Art. 18 of the Limitation Act is one for compensation for non-completion and that does not apply to a case in which the land has vested in the Government. Art 120 governs the suit. A suit to recover compensation for land acquired, instituted on the refusal of the Collector to award any compensation under the L. A. Act, is governed by Art. 120 of Schedule II of the Limitation Act, the right to sue accruing either from the date of acquisition or of the refusal by the Collector to award compensation, (m).

Compensation for possession before declaration :—Sections 16 and 17 deal with taking possession by the collector after and before award respectively. But there may be cases in which the Collector takes possession of lands before any notice of acquisition given under L. A. Act. Their Lordships of the Judicial Committee held that “the English law as comprised in

(i) *Prasanna Kumar Das v. State of Orissa*, A. I. R. 1956, Orissa 114.

(j) *Jhandu Lal v. State of Punjab*, A. I. R. 1961 S. C. 343.

(k) *Jhandulal v. State of Punjab*, *ibid*.

(l) *Mantharavadi Venkayya v. The Secretary of State*, 27 M. 535.

(m) *Rameswar Singh v. Secretary of State*, 34 C. 470 : 11 C. W. N. 356 : 5 C. L. J. 669.

the maxim *quicquid plantatur solo, solo cedit* has no application in India. There is no absolute rule of law in India that whatever is affixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself. Buildings erected on the land of another do not, by the mere accident of their attachment to the soil become the property of the owner of the soil. If he who builds on another's land is not a mere trespasser but is in possession under any bonafide title or claim or colour of title, he is entitled either to remove the materials, or to obtain compensation for the value of the building, at the option of the owner of the land" (n). Where Government entered into possession before the land was actually notified for acquisition under the L. A. Act, I of 1894, it was held that the justice of the case was amply met by awarding to the owner of land (as compensation for such occupation) interest on the value of land computed from the date when the Government so took possession. When the Government took urgent possession of certain land before the award under the L. A. Act was made, interest on the amount awarded can be given to the person entitled for the period between the date of taking possession by the Government and payment of compensation money, even in a case which does not fall exactly under sections 16 and 17 on the principle that the right to receive interest takes the place of the right to retain possession (o).

Sub-section (4) of sec. 17 :—As per sec. 5A any person interested is entitled to be heard after notification under sec. 4 in respect of the acquisition of the land in question. Sec. 17(4) provides an exception to this rule whereby the appropriate Government may declare that sec. 5A shall not apply. It may direct a declaration to be made under sn. 6 in respect of the land at any time after sn. 4 (1) notification.

S. 17(4) is not mandatory. Contravention of sn. 17(4) does not vitiate the earlier proceedings. It is a mere irregularity not affecting the merits of acquisition (p).

The effect of a declaration under s. 17(4) is that a declaration under s. 6 can be issued immediately after notification under s. 4 even though the proceedings under s. 5A have been gone into (q). Unless it can be said that Government's opinion was arbitrary, High Court will not hold that the declaration was *ultra vires*. There is no jurisdiction in the Court to sit in judgment over the direction of the Government under s. 17(4) making s. 5A inapplicable to the acquisition. The Government's decision is final in this respect and is not open to review (r). An acquisition was quashed as the formalities required under s. 4 and sec. 5A were not complied with (s). When the notification was found to be defective as it did not contain any

(n) *Vallabadas Narainji v. The Development Officer, Bandra*, 33 C.W.N. 785 (P. C.) : 50 C. L. J. 45 (P. C.) : 57 M. L. J. 139.

(o) *The Revenue Divisional Officer, Trichinapoly, v. Venkatarama Ayyar*, 59 M. 433.

(p) *B. K. Abdul Aziz v. The State of Mysore*, A. I. R. 1917 Mys. 12.

(q) *Lakshmi Narain v. State of U. P.*, A. I. R. 1957 All 816.

(r) *Shri Raja Vasireddi Harihara Prosad v. Kota Jagannathan*, A. I. R. 1955 Andh. Pra. 184.

(s) *Abdul M. Khan v. Union of India*, A. I. R. 1960 All. 584.

declaration of the Government under s. 17(4), it was held that this defect was fatal to the whole proceedings (t).

Specification in the notification.—S. 17(4) read with sub-s. (1) can be applied only where a land is shown objectively to be either waste or arable. Where a plot is simply mentioned as required in part and at the same time, Government seeks to dispense with enquiry under s. 5-A, it is all the more incumbent upon Government to specify in the notification which particular portion of the plot is considered to be waste or arable (u).

Notifications under s. 17(1) not compulsory for proceedings under s. 17(4)—Section 17(1) and (4) are two independent provisions capable of being enforced at two different stages of land acquisition proceedings. Action under 17(1) can be taken only after notifications under section 4 and 6 and the notice under s. 9(1) have been issued and objections if any, under s. 5-A have been disposed off. The only condition precedent to the exercise of power under s. 17(4) is that the appropriate Government should be of opinion that sections 17(1) and (2) apply to that case. Both the sub-sections provide for urgency. The extreme urgency stated in s. 17(4) will be defeated if so many notices required under s. 17(1) are to be given. So a notification under s. 17(4) can be issued even if a notification under s. 17(1) has not been already issued, (v).

If the land is not waste or arable, s. 17(4) cannot be applied so as to dispense with the proceedings under s. 5-A. If it can be proved that the Governor did not apply his mind to the question of urgency or acted *mala fides*, the declaration is bad and the proceedings under s. 17(4) can be quashed, (w).

Undeclared Public Purposes :—In *Gadadhar Ghosh v. State of West Bengal* (x), it was held *inter alia* that although it may not be necessary to declare the exact nature of the public purpose in the notifications as laid down in *State of Bombay v. Bhanji* (y), and in *Babu Barkya Thakur v. The State of Bombay*, still if the purpose be challenged in a Court of law, the same has to be established by evidence *aliunde*. But the converse of the above is not a legal proposition, namely, when the purpose is expressly stated in the notification or the declaration and that is challenged as not a public purpose, it does not become permissible to add to that purpose other purposes not notified or declared and try to support the land acquisition both on the notified and declared purpose and also on the unnotified and undeclared purpose.

(t) *Deolal Rai v. State of Bihar*, A.I.R. 1960 Pat. 413. Also see (*Shri*) *Navnital Ranchhodlal v. State of Bombay*, 62 B. m. L. R. 622 : A. I. R. 1961 Bom. 89.

(u) *Abdul Jabbar v. State of West Bengal*, 1. L. R. (1967), 1 Cal. 159.

(v) *Sarju Prosad Sahu v. State of U. P.*, A. I. R. 1965 S. C. 1763 ; *Nandeswar Prosad v. U. P. Government*, A. I. R. 1964 S. C. 1217 ; *Hakim Singh v. State of U. P.*, A. I. R. 1970, All. 151 (F. B.).

(w) *Jatadhar Mitra v. State of West Bengal*, A. I. R. 1970 Cal. 90 ; *Printers House (P) Ltd. v. Misrilal*, A. I. R. 1970 Punj. 1 (F. B.).

(x) *Gadadhar Ghosh v. State of West Bengal*, 67 C. W. N. 460.

(y) *State of Bombay v. Bhanji*, 1955 (1) S. C. R. 777 ; *Babu Barkya Thakur v. The State of Bombay*, A. I. R. 1961 S. C. 1203.

Vesting of the land in Government and its power of withdrawal from acquisition:—After possession has been taken pursuant to a notification under s. 17(1) the land is vested in the Government and there is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification. The notification cannot be cancelled under s. 21 of the General Clauses Act nor can the notification be withdrawn in exercise of the powers of the L. A. Act under s. 48, (z).

Effect of absence of order under s. 17(4) :—If no such order under s. 17(4) is made and if no notification under s. 5-A is issued but a notification under s. 6 only is issued, the acquisition is bad because the owners had no opportunity of making their representations. In a writ petition High Court can try issues of both fact and law, (a).

(z) *Lt. Governor of Himachal Pradesh v. Avinash Sharma*, A. I. R. 1970 S. C. 1576 ;
Rel. on A. I. R. 1966 S. C. 1593.

(a) *Gunwant Kaur v. Municipal Committee of Bhatinda*, A. I. R. 1970 S. C. 802.

PART III

REFERENCE TO COURT

Reference to Court and Procedure thereon.

18. Reference to Court.—(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made,—

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award ;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

State Amendments

1. Andhra Pradesh :—*By Andhra Pradesh Act XX of 1959 :—*

For clause (b) of the proviso to sub-section (2) of section 18, the following clause shall be substituted, namely :

“(b) in other cases, within two months from the date of service of the notice from the Collector under section 12, sub-section (2)”.

2. Maharashtra—*By Bombay Act XXXV of 1953, Sec. 8 :—*

In section 18 of the said Act, after the word “award” where it occurs for the first time the words “or the amendment” shall be inserted.

By Maharashtra Act XXXVIII of 1964, Sec. 3 :—

To section 18, the following sub-section shall be added at the end namely :—

“(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a court subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure (Act V of 1908).

3. Uttar Pradesh—By U. P. Act XXII of 1954 :—

The following sub-section have been added, namely :

“(3) Without prejudice to the provisions of sub-section (1), the Land Reforms Commissioner may, where he considers the amount of compensation allowed by the award under section 11 to be excessive require the Collector that the matter may be referred by him to the Court for determination of the amount of compensation.

Explanation.—In any case of land under Chapter VII the requisition under this sub-section may be made by the Land Reforms Commissioner at the request of the Company on its undertaking to pay all the cost consequent upon such requisition.

(4) The requisition shall state the grounds on which objection to the award is taken and shall be made within six months from the date of award.”

By U. P. Act II of 1959, S. 376 and Sch. II, Para 6.

“The full stop at the end of sub-section (1) of section 18 shall be deemed to be *changed* to a comma and the words “or the amount of costs allowed” shall be deemed to be *added*.

4. Jubbulpore (City)—C. P. and Berar Act VIII of 1950, S. 293 and Sch. 1, Para. 6 :—

Same as that of U. P. Act II of 1959.

5. Madhya Pradesh—C. P. Act II of 1922, S. 239 and Sch. Para 4 :—

In section 18—

(a) at the end of sub-section (1), the words ‘or the amount of the costs allowed’ shall be deemed to be added ;

C. P. and Berar Act VII of 1949, S. 3 :—

(b) after sub-section (2) the following sub-section shall be inserted, namely :—

“(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a court subordinate to the High Court within the meaning of s. 115 of the Code of Civil Procedure, 1908.”

6. Nagpur (City)—C. P. Act XXXVI of 1936. Same as that of Jubbulpore City.

7. Gujarat—Same as that of Maharashtra.

8. Orissa—Orissa Act XIX of 1948, S. 2.

Same as that given in item (b) of Madhya Pradesh.

9. Punjab—Punjab Act IV of 1922, S. 3 :—

Same as that given under Jubbulpore City.

Punjab Act II 1954, S. 3.

Same as that given in item (b) of Madhya Pradesh.

Notes

This is sec. 15 of the old Act X of 1870 that dealt with Reference and the section ran as follows :—“When the Collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed.

If no claimant attends,
 or if the Collector considers that further enquiry as to the claim ought to be made by the Court,
 or if any person who the Collector has reason to think interested does not attend,
 or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed.
 or if, upon the said enquiry, any question respecting the title to the land or any rights thereto or interests therein arise between or among two or more persons making conflicting claims in respect thereof.
 the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing."

Scope of the section :—It cannot be denied that the proceedings under Part III which result in an award of the Court are judicial proceedings and by virtue of section 54, the Court is subordinate to the High Court. Sections 18 and 19 provide for the procedure to be adopted to initiate those proceedings. Ordinarily a proceeding is commenced in a Court of law by the presentation of a plaint or a petition to it, but the L. A. Act has adopted a somewhat different method, viz., the presentation of the application to the Collector. If the requirements of section 18 are complied with, the Collector has no option but to make the reference and in doing so, in addition to the statements to be sent by him under section 19(1) he has to attach a schedule of the particulars of the notices served and of the statement made by the parties. The objection petition itself is forwarded to the Court. The limitation fixed under section 18 has also reference to the filing of the objection petition. It seems clear, therefore, that the proceedings which culminate in the court's award, commences with the filing of the application under section 18. As soon as it is filed the matter of the amount of proper compensation assumes a litigious form and becomes a contentious proceedings between the owner and the Collector. It was held by Chandravarkar, J., *In re Rustomji Jijibhai, (a)*, that the application under section 18 is in the nature of a plaint in a suit. It is the first step in the judicial proceedings and is an integral part of it.

Objections referred to in the section can be with reference to measurement of land, the amount of compensation payable, the persons entitled to such compensation and the apportionment of compensation amongst the persons interested (b). It will be noted that there is no provision enabling an owner to object to the validity of the order of acquisition or to the want of jurisdiction to make an order of acquisition. The remedy in such cases is by resort to the writ jurisdiction of the High Court or by a regular suit, (c).

(a) *Rustomji Jijibhai, In re.* 30 Bom. 341.

(b) *T. S. Veera Raghava v. Special Officer*, 1957, Ker. L. T. 1040 following A. I. R. 1930 P. C. 64.

(c) *Dinshaw Italia v. State of Hyderabad*, A. I. R. 1955 Hyd. 203.

Nature of Collector's enquiry and award :—We have seen (vide notes under s. 11) that the L. A. Collector is merely the agent of Government for the purpose of acquisition and is in no sense of the term a judicial officer nor is the proceeding before him a judicial proceeding, (d). His enquiry and his valuations are departmental in their character and made for the purpose of enabling the Government to make a tender through him to the persons interested. Therefore, the fact that in such a proceeding the Collector did not sufficiently consider the evidence produced by the owner of the land and that he formed his opinion on materials which were not before him as evidence would not render the proceedings improper. If the owner doubted the correctness of his valuation, his remedy lay in demanding a reference to a civil court under section 18 of the Act (e). The Privy Council in appeal held that with regard to the enquiry directed by the Act as to the value of the land taken thereunder the duty of the Collector under the section relating thereto, is to fix the sum which, in his best judgment, is the value. His proceedings are administrative and not judicial and his award though conclusive against the Government is subject to the landowner's right to have the matter referred to the Court.

Collector is a quasi-judicial authority :—But it cannot be denied that the Collector is a quasi-judicial authority (f). The Collector acting under s. 18 of L. A. Act satisfies test of a tribunal for purposes of Art. 227 of Constitution. Both in the question of whether a person is a 'person interested' and whether the application is within time, the Collector performs judicial functions. In accepting payment of compensation, words "under protest" need not be on the receipt itself, but it would be enough if those do not require more (g).

Remedy of a person dissatisfied with Collector's award :—The "award" (of the Collector) in which the enquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands ; and that if a judicial ascertainment of the value is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the Court, (h). Section 12 provides that the award shall be final and conclusive, whether the persons interested have appeared or not as to question which can be dealt with by the Collector under sec. 11 subject to the right to the party to require a reference to the Court under sec. 18. The declaration made by the Government under sec. 6 is conclusive evidence that the land is needed for the purposes sanctioned by the Act. All that the parties interested can urge before the Collector is that the area of the land is not properly stated, the compensation proposed is insufficient and the amount has been wrongly divided amongst them. The only remedy of a person interested who is dissatisfied with the Collector's award is to apply

(d) *Durgadas Rakshit v. Queen Empress*, 27 Cal. 820.

(e) *Ezra v. Secretary of State*, 30 Cal. 85 ; 7 C. W. N. 249.

(f) *Md. Golam Ali Mina v. L. A. Collector*, A. I. R. 1969 Cal. 221 (D. B.).

(g) *Suresh Chandra Roy v. L. A. Collector*, A. I. R. 1964 Cal. 283 and *Atul Kumar Bhadra v. State of West Bengal*, Civil Revn. Case No. 1925 of 1957 is dissented 'ro .

(h) *Ezra v. Secretary of State*, 32 Cal. 605 ; *Secretary of State v. Quamar Ali*, 16A, L.J. 669 : 51 I. C. 501.

for a reference under sec. 18 and no other remedy is provided by the Act (i).

The L. A. Act has created a special jurisdiction and provided a special remedy for persons aggrieved with anything done with the exercise of that jurisdiction (j).

But if a person is not even served with a notice under sec. 9 of the Act and for that reason fails to prefer his claim or objection to the Collector and on whom no notice has been served under sec. 12(2) of the Act and for that reason fails to apply for a reference within statutory period, it cannot be said that the special remedy under the Act being thus lost, such a person can not seek his remedy in the ordinary Civil Court (k).

But if a person interested have appeared before the Court to which reference under sec. 18 has been made by the Collector it is not open to him to agitate the question again in another civil suit, (l).

If a person is minor and has not received a notice under sec. 9 or sec. 12 and has not appeared before the Collector, his remedy by civil suit is not barred, (l).

Who can apply for reference and parties to reference :—Any person having an interest or claiming to have an interest in the subject matter of acquisition has a right to claim a reference under section 18 of the Act. A highly technical objection such as that a particular claimant at whose instance the reference under section 18 was made was not competent to require such a reference, having really no interest in the subject matter, should be taken at the first opportunity. If it be not so taken it must be considered to have been waived (m).

Where a mortgage had been effected before the acquisition it was open to him to make a claim before the Collector, if he did not make such claim, he cannot be added as a party on a reference under sec. 18 and 31(2).

If the objection is as to the area of the land or as to the legality of the heir entitled to receive the amount, the Government has to be made a defendant, (n). But the Collector or the Government is not a necessary party where title and apportionment are at issue (o).

Difference between Reference under Act X of 1870 and Act I of 1894 :—

In cases where the Collector and the parties interested, could not agree as to the value of the land, the law prior to Act X of 1870 provided that the matter should be left altogether to the decision of independent arbitrators, the Legislature being so careful to avoid the appearance of Government influence, that even when an award was reversed by a Court of justice, the Court was

(i) *Kasturti Pillai v. Municipal Council, Erode*, 43 Mad. 280 : 53 I. C. 646 : 10 L. W. N. 366 : 26 M. L. T. 268 : 37 M. L. J. 618 ; *Hari Kissen Khosla v. State of Pepsu*, A. I. R. 1958 Punj. 490.

(j) *Chhedti Ram v. Ahmad Shafi*, 9 O. W. N. 1176 ; 151 I. C. 674 ; 1933 A. I. R. (Q) 100.

(k) *Birendra Nath Banerjee v. Mrityunjoy Roy*, 66 C. W. N. 191.

(l) *Kunhutti Sahib v. Veeramukuty*, A. I. R. 1960 J. & K. 128 following 7 Cal. 383 (P. C.).

(m) *Sri Kanchumarti Venkata Krishna Garu v. Secretary of State*, 35 C. W. N. 560 (P. C.).

(n) *Fakir Chand v. Municipal Committee, Hasra*, 15 I. C. 37.

(o) *In re. Jerbai Franji Mehta*, A. I. R. 1950 Bom. 243.

not authorised to dispose of the question of compensation, but the matter had to be referred to a fresh set of arbitrators. It was found, however, in practice, that arbitrators not unfrequently made exorbitant awards at time even far in excess of the amount claimed by the parties interested. It was therefore, thought desirable not only that a change should be made in the constitution of the tribunal which was to award the compensation in such cases, but that certain rules should be laid down to regulate the principles upon which compensation should be awarded. Act X of 1870, accordingly provided that when the parties did not agree with the Collector as to the value of the land, the Collector would refer the matter for the decision of the Civil Court, and for this purpose the Court was assisted by two assessors, one nominated by the Collector, and the other by the parties (s. 19). If the judge agreed with one or both of the assessors, this award was final ; but it was open to the judge to differ from both assessors, in which case his decision would prevail subject to the right of appeal.

In Act I of 1894, reference is to the Court only without being assisted by the arbitrators. In the statement of objects and reasons in introducing the Bill for amendment of Act X of 1870 it was stated. "This change in the procedure for determining the valuation of land taken up for public works will also render it possible to dispense with the services of the assessors who are now supposed to assist the Courts. Considering the difficulty, almost throughout the country of obtaining the services of such assessors as are really qualified to form a sound opinion on the subject of the valuation of land, it is believed that the proposal to dispense with them and to leave the matter to the sole arbitrament, first of the Collector then of Judge, will in no way diminish the efficiency of the Court in enquiries in which the value of the land is in issue. It will certainly tend to shorten litigation and to diminish its expenses.

No suit lies against Collector's award and exceptions :—Whenever a question of title arises between rival claimants it must under the terms of the L. A. Act, be decided in the case and cannot be made the subject of a separate suit (p). When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special court, for the investigation of matters which might possibly be in controversy, such jurisdiction is exclusive and cannot concurrently be exercised by the ordinary courts (q).

It is to be observed, however, that the Collector under Act X of 1870 had no power to decide the question of apportionment in any case. Whenever there was any question of apportionment he was bound to refer the matter to the Court, i. e., the Civil Court and the Civil Court had to decide the matter under ss. 38 and 39 of the Act. This appears to be the reason why their Lordships in *Raja Nilmonee Singh's Case* (r) referred to the adjudication under sections 38 and 39. Under Act I of 1894, compulsory reference was abolished and the Collector has full power to deal with the

(p) *Babijan v. Secretary of State*, 4 C. L. J. 256.

(q) *Maharaja Sir Rame wcr Singh v. Secretary of State*, 34 Cal. 420 ; *Bhandi Singh v. Ramadhin Roy*, 10 C. W. N. 991 : 2 C. L. J. 20n.

(r) *Raja Nilmonee Singh v. Rambandhu Rai*, 7 Cal. 388 (P.C.).

question of apportionment under section 11 and his award, subject to the other provisions of the Act, is final under s. 12, no doubt, as between the Collector on the one hand, and the persons interested on the other. The person aggrieved by the award, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested, may apply to the Collector for a reference to the Court. The "Court" by which is meant the principal civil court of original jurisdiction or a judicial officer specially empowered to perform the functions of the court, under the Act, has to decide the questions referred to the court. That being so, it is not reasonable to hold that the Act, while creating a special court to decide such questions intended an adjudication of any question relating to apportionment by the ordinary civil courts. It cannot be held that a suit lies notwithstanding a reference to the court upon the application of a party under s. 18 or by the Collector of his own motion under section 30. It is an established principle that where by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of civil court is ousted and in the case of injury the party cannot proceed by action, (s).

But it has been held recently in *Birendra Nath Banerjee v. Mrityunjoy Roy* (t) that "those persons on whom no notices under section 9 nor under section 12(2) of the Act were served, are entitled to maintain a suit for a share of the compensation money."

Omission to claim reference by a joint claimant :—The ordinary rule in a proceeding under the L. A. Act is that a party who has made no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect and such person, upon a reference made by some other party who considers himself aggrieved by the award of the Collector, is not entitled to have it varied for his own benefit, (u).

In a case where a joint petition is made by several petitioners, if the claim of one is attended by some defects on his part, no relief can be granted to the rest, the reason is that the claim of the petitioners being joint, Court cannot make any apportionment if one fails because of his conduct, (v).

(s) *Stevens v. Jeacocke*, (1848) 11 Q. B. 731 ; *West v. Downman*, (1880) L. R. 14, Ch. D. 111 ; *Ramachandra v. Secretary of State*, 12 Mad. 105 ; *Saibesh Chandra Sirkar v. Sir Bijoy Chand Mahatap*, 26 C. W. N. 506. See also *Shoshi Mukhi Debya v. Keshab Lal Mukherjee*, 27 C. W. N. 809.

(t) *Birendra Nath Banerjee v. Mrityunjoy Roy*, 66 C. W. N. 191. *Raja Nilmoni Singh's case* 8 I. A. 90 : 7 Cal. 338 and *Harmutjan Bibi v. Padma Lochan*, I. L. R. 12 Cal. 33 and *Punnabati Debi v. Raja Padmanund Singh Bahadur*, 7 C. W. N. 538 ; *Bhandi Singh v. Ramadhin Roy*, 10 C. W. N. 991 ; *Surya Singh v. Golamjat Singh*, 47 C. W. N. 619, and *Saibesh Chandra Sarkar v. Sir Bejoy Chand*, 26 C. W. N. 506 were considered and distinguished in the aforementioned case.

(u) *Bejoy Chand Mahatap v. P. K. Majumdar*, 13 C. L. J. 159 ; *L. A. Officer, Karachi v. Lakshmi Bai*, 11 I. C. 304 ; *Maharaja Sashi Kanta Acharjee v. Abdul Rahman Sarkar*, 38 C. L. J. 265.

(v) *Ganesh Nayak v. L. A. Collector*, 65 C. W. N. 909 ; *Abu Baker v. Peary Mohun Mukherjee*, 34 Cal. 451.

Where in a proceeding under the L. A. Act the tenants accepted the Collector's valuation but the landlords objected to it and asked for a reference and the judge allowed an excess amount representing all the interests in the land, it was held that the tenants were not entitled to any portion of the excess amount allowed by the Judge and the Collector will have to deposit the excess amount which would be payable to the landlords in respect of their interests only. He will not have to deposit anything on account of the tenants' share in the excess amount as found by the Court below, (w).

When there are two claimants and one of them agrees to accept a certain valuation and his share at a certain ratio in relation to the other claimant and an award is made in respect of both claimants on such basis the second claimant, if he causes a reference to be made as to the amount alone but not as to the apportionment, cannot on the amount being increased, claim the whole thereof minus the sum which, the first claimant had accepted by agreement on the basis of the lower valuation. He is only entitled to his share according to the ratio of apportionment by which he is bound and the gain is the gain of the authority which acquired the land (x). Where in a proceeding under the L. A. Act in respect of the amount awarded, but not the apportionment between himself and his occupancy tenant, the latter accepting the compensation awarded to him, the owner is not entitled to an increased amount resulting from his objection less the compensation accepted by the tenant but only to such portion of the increased amount awarded by the Court as accords with the apportionment awarded. The landlord can not claim the amount which tenant may have received if he had not accepted the lower valuation but is only entitled to his share of it, e. g., so much of the value of the lands acquired as represents his interest in the same. The Government and not the owner is entitled to the benefit arising from the tenant having accepted compensation upon a much lower value, (y).

In *Province of Bengal v. Gobinda Thakur* (z) it has been held that where the reference under sec. 18 raises a question as to the compensation payable, in petition filed by all the brothers forming members of a joint family acting jointly and one of them subsequently withdraws from the case, the Land Acquisition judge is justified in making the award for the entire sum representing the interest of all the brothers after service of regular notice on the claimant who has withdrawn. The mere fact that one of the referring claimants chooses to withdraw from the case at a late stage when a fresh petition by the other referring claimants would be barred, is immaterial.

Reference barred by consent or conduct :—According to the ordinary principles of agreement when an offer is made and accepted it becomes a contract and binding on the parties. In cases in which a claimant accepts the award, that is, the tender of the Collector, he cannot be permitted to the

(w) *Secretary of State v. Manohar Mukherjee*, 23 C. W. N. 720.

(x) *Prag Narain v. The Collector of Agra*, 59 I. A. 155 : 54 All. 286 : 36 C. W. N. 579 : 55 C. L. J. 318 : 34 Bom. L. R. 885 : 1932, A. L. J. 741 : 136 I. C. 449 : 1932 A. I. R. (P. C.) 102.

(y) *The Collector of Dacca v. Golam Ajam Choudhury*, 40 C. W. N. 1143 : 1936, A. I. R. (C) 688.

(z) *Province of Bengal v. G. Thakur*, A. I. R. 1951, Cal. 43 : 55 C. W. N. 110.

same and claim a reference thereof to the civil court. Similarly, a person who has taken payment without protest must be deemed to have waived his objections to the award, if any, and cannot claim a reference thereafter [vide sec. 20 (b)]. In a proceeding under the L. A. Act a party who has raised no objection to the apportionment of the compensation made by the Collector must be taken to have accepted the award in that respect, (a). A claimant, by not adducing any evidence before the Collector and by his mortgagee accepting the sum awarded to him did not by implication accept the award, (b).

On receipt of Treasury Bill :—In *Sommasundaram Mudaliar v. Dt. Collector Chittoor* (c), it has been held that Government Treasury is not a bank and a bill on Treasury is not negotiable ; so it is not a bill of exchange. Therefore the argument that the receipt of a bill drawn on treasury for the amount of compensation is not the same as the receipt of the amount in coin or currency notes and so the bill drawn on treasury to an order to pay, is in the nature of a cheque drawn on a bank, and accordingly untill money was drawn in cash there was no payment and protest can be lodged at any time before actual money was received, is not at all tenable. It was further held that there is no difference between "receipt of payment" and "receipt of amount" and no protest having been lodged with the Land Acquisition Officer at the time of receiving the Bill, there was no protest and it can not be agitated afterwards and the payee is not entitled to make any application under sec. 18 within meaning of second proviso to sec. 31(2) of the Act.

Receiving of compensation money under protest, as to the sufficiency of the amount, does not bar an application by the receiving party for reference under this section, because the proviso to s. 31(2) debars him only when he has accepted payment otherwise than under protest. Far less, it is a bar to any other party, (d) (See notes under heading "Receipt of compensation under protest" under s. 31).

Reference barred by contract :—The Board of Trustees for Improvement of Calcutta has power to enter into a contract for settling the price of the land with the owner before proceedings under the Land Acquisition Act are started. In the land acquisition proceedings the Collector is under no obligation to disregard the contract and to proceed to determine the market value under s. 11 of the Act. He should rather respect the contract and make an award on its basis. If a reference is made by the Collector under s. 81 of the Act, the Tribunal is not bound to take evidence of market value and to award compensation on its basis. The contract between the owner and the Board which is a perfectly valid one and which can be enforced in Civil Court would prevent the owner from leading any evidence relating

(a) *Abu Baker v. Peary Mohon Mukherjee*, 34 Cal. 451.

(b) *Gangadas Mulji v. Haji Ali Mahomad Jalal Saji*, 42 Bom. 54 : 18 Bom. L.R. 826 ; 36 I. C. 433.

(c) *Sommasundaram Mudaliar v. Dt. Collector, Chittoor*, A. I. R. 1967 Andh. Pra. 126.

(d) *Bago v. Roshan*, A. I. R. 1926, Lah. 321 ; 92 I. C. 844.

to the market value before the Tribunal or in proceedings upon any other footing than that of the contract, (e).

Who can claim reference :—Any person claiming an interest in the compensation money, whether he has or has not an interest in the land acquired, is entitled to ask for a reference and appear in support of it. Some land in which one B, owned a mourashi mokurari tenant's interest was acquired by Government. Previous to the declaration of the acquisition one G, entered into a contract with B. Notice of the acquisition under section 9 of the Atc was served, amongst others on G. G alone appeared before the Collector and on the award being made, applied for a reference under section 18 on the ground that the amount awarded, was insufficient. The Collector made the reference asked for. Until the date of declaration no conveyance of B's. interest in the land had passed in favour of G. But some time after the award and the order of reference, B purported to convey all the interests he could claim on account of the land to G. The L. A. Judge held, that under the circumstances, G had no locus standi to contest the sufficiency of the award. It was held that no question of apportionment having arisen, the question whether G had an interest such as would entitle him to any portion of the compensation money, was a matter foreign to the proceeding at the stage. The fact that G had claimed an interest in the compensation money and the Collector had thought that he was a person who could come in as claiming an interest was sufficient to entitle him to ask for a reference and to appear in support of it, (f).

In *Rani Hemanta Kumari v. H. C. Guha*, (g) it was contended that the dispute being between two persons having conflicting claims, no reference lies under section 18. It was suggested that section 18 contemplates references only in the case of various persons interested in various capacities such as landlords, tenure-holders and tenants and does not cover the case of various persons who have conflicting claims as landlords. It was held that the question, though at first sight it appears to be foreign to the matters ordinarily to be determined by a Court sitting to decide a reference under the L. A. Act, still having regard to sections 18 and 3 of the Act there can be no doubt that the court had jurisdiction to hear the references. In this case dispute is with reference to the persons to whom the compensation is payable and it is made by a person who claims to be interested as landlord in the land acquired. Section 18 read with Sn. 3(b) of the Act enables any person, claiming an interest in the compensation, who has not accepted the award, to require a reference to the Court; it is no part of the Collector's duty to decide whether the claim is well founded and he is not authorised to refuse to make the reference merely because he thinks that the claim is not well founded, (h).

(e) *Ananta Ram Banerji v. Secretary of State*, 41 C. W. N. 1291 : 66 C. L. J. 134 : 1937, A. I. R. (C) 680.

(f) *J. C. Galstaun v. Secretary of State*, 10 C. W. N. 195.

(g) *Rani Hemanta Kumari v. Hari Charan Guha*, 5 C. L. J. 301.

(h) *T. K. Parameswara Aiyer v. L. A. Collector of Palghat*, 42 Mad. 231 ; *Administrator General of Bengal v. L. A. Collector*, 24-Parganas, 12 C. W. N. 241.

It should be noted, however, that "any person interested" in s. 18, does not include the Secretary of State for India-in-Council, (i). A reversioner who is entitled to succeed to land on the death of a widow holding a life-interest is a "person interested", as defined in sec. 3 of the L. A. Act, and therefore entitled to present an objection under sec. 18 of the Act, (j). The position of a shebait in relation to the next taker of that office being analogous to that of a Hindu female heir taking a limited estate in relation to the expectant reversioner ; a presumptive shebait is competent to institute a suit to challenge the validity of a transaction made by the existing shebait. The right to bring such a suit is sufficient interest to entitle the presumptive shebait to ask for and obtain a reference under s. 18 of the L. A. Act when the debutter property is being converted by acquisition into money which is to be apportioned or paid out. The remote presumptive shebait is all interested in the protection of the debutter estate, and on a question of apportionment which rests on the validity or otherwise of a transfer which the existing shebait has made, they are all proper parties, (k).

When a Receiver to the estate has been appointed by the court and directed to accept the L. A. Collector's award on behalf of all the claimants, presence of the Receiver at the signing of the award is representation of all the claimants within the meaning of sec. 18(2)(a), and one of them, seeking a reference to Court, must apply within 6 weeks from the date when the award is so signed. When a Receiver has been appointed by the Court to accept the L. A. Collector's award "without prejudice to the contentions of the parties" and one of the contentions is that the valuation offered by the Collector is too low, a claimant is not debarred, by such acceptance of the award by the Receiver, from seeking a reference to Court. Even if there be no such direction, a party would be entitled, under the general law relating to Receivers, to claim a reference, inspite of acceptance of the award by the Receiver, (l).

Under C. P. Tenancy Act the son of a recorded tenant has no interest in the land within the meaning of L. A. Act and has no right to object to the award, (m). Although an application under sec. 18 of the L. A. Act requiring the Collector to make a reference to the Court can only be preferred by a person interested, an objection that the party had no locus standi to make such an application and that the reference was in consequence invalid, should be taken at the first opportunity, and if not so taken must be considered to have been waived, (n).

When property is under Court of Wards :—A mother of a person whose property under the Court of Wards, challenging amount of compensation for property of her son acquired by Government, on the plea that her allowance

(i) *Secretary of State v. B. I. S. N. Coy.*, 15 C. W. N. 848 ; 13 C. L. J. 90.

(j) *Gangi v. Santu*, 116, I. C. 335 ; (1929) A. I. R. (Lah.) 736.

(k) *Nanda Lal Müllick v. Kumar Arun Chandra Sinha*, 41 C. W. N. 404.

(l) *Leah Elias Joseph Solomon v. H. C. Stork*, I. L. R. 61 C. 1041 : 38 C. W. N. 844.

(m) *S. M. De Souza v. Secretary of State*, 1936, A. I. R. (P) 542.

(n) *Sri Kanchumurthy Venkata Krishnayya Garu v. The Secretary of State*, 35 C. W. N. 560 (P. C.) : 53 C. L. J. 320 : 60 M. L. J. 399 ; 33 Bom. L. R. 874 : 131 I. C. 332 : 1931 A. I. R. (P. C.) 39.

would also increase, is not a 'person interested' within meaning of s. 18(1), property being under the Court of Wards. Besides, suit, affecting that property, without leave of the Court of Wards, is barred under s. 20 of the Court of Wards Act, (o).

Reference by a company :—A company or a local authority on whose behalf land is being acquired, is a person interested within the meaning of sec. 3(b) of the L. A. Act if it has an interest as tenant or otherwise in the lands that are the subject of acquisition, and it has, therefore, a right to demand a reference under sec. 18 of the Act as a claimant. This right is not taken away by the proviso to s. 50(2) of the Act. The proper interpretation of the proviso to s. 50(2) is that it relates only to that sub-section and makes it clear that a company or local authority has not been granted a power to demand a reference as to compensation, by virtue of the power given therein to appeal and adduce evidence before the Collector or Court on the subject. It does not therefore, take away the rights which the company or local authority might enjoy as claimants or persons interested as tenants or otherwise under s. 18 of the Act, (p).

But a company which has no interest in the land acquired and for whom the land is acquired cannot demand a reference under section 18, (q).

Machinery in England to settle compensation :—Under the provisions of secs. 23 and 28 of the Lands Clauses Act, 1845, the claimant has the right to elect whether the compensation shall be determined either by the sheriff's jury or by arbitration. Sec. 23 provides that if the compensation claimed or offered exceeds \$ 50, and the claimant desires to have the matter settled by arbitration, and signifies such desire by notice in writing to the promoters of the undertaking before they have issued their warrant to the sheriff to summon a jury, stating in the notice the nature of the interest in respect of which the claimant claims compensation, and the amount of the compensation claimed, then the matter is to be settled by arbitration. If, however, the claimant does not give such notice to the promoters, or if the matter having been referred to arbitration, the arbitrators or umpire fail to make their or his award within three months, or if no final award shall be made the question of compensation shall be settled by the sheriff's jury.

Machinery in India to settle compensation in the civil court :—There is no provision in the law for an appeal from the Collector's award. His award becomes final unless objected to, with the proviso that any person dissatisfied may require the Collector to send the case to the civil court for the judicial determination of the compensation payable for the land acquired and the apportionment thereof. Under the L. A. Act X of 1870 repealed by Act I of 1894 the Collector had no power to decide the question of apportionment in any case. Whenever there was any question of apportionment, he was

(o) *Durga Devi v. Collector of Jammu*, A. I. R. 1967 J. & K. 6.

(p) *Comilla Electric Supply Ltd. v. East Bengal Bank Ltd.*, I. L. R. (1939) 2 Cal. 401 ; 43 C. W. N. 973 : 1939 A. I. R. (C) 669 : *Babujan v. Secretary of State*, 4 C. L. J. 259.

(q) *Corporation of City of Nagpur v. Narendra Kumar Motilal*, I. L. R. (1958) Bom. 354 : A. I. R. 1959 Bom. 297 : 60 Bom. L. R. 94 ; *Satish Chandra Singha v. Ananda Gopal Das*, 20 C. W. N. 819.

bound to refer the matter to the Court i. e., the civil court, and the civil court had to decide the matter under sections 38 and 39 of the Act. This appears to be the reason why their Lordships in *Raja Nilmonnee Singh's Case* (r), referred to adjudication under sections 38 and 39. Under Act I of 1894 compulsory reference was abolished and the Collector has full power to deal with the question of apportionment under sec. 11 and his award, subject to the provisions of the Act, is final under section 12, no doubt, as between the Collector, on the one hand and the person interested, on the other. The person aggrieved by the award, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested, may apply to the Collector for reference to the Court. The "Court" by which is meant the principal civil court of original jurisdiction or a judicial officer specially empowered to perform the functions of the court under the Act, has to decide questions referred to the court, (s).

The proceedings before the Collector are administrative and not judicial and his award, though conclusive against the Government, is subject to the land-owners' right to have the matter referred to the Court, (t). Reference therefore, means the submission by the Collector to the Court the objections of a person interested in the land when land is acquired, whether his objections be as to the measurement, the amount of compensation, the person to whom it is payable or to the apportionment of the compensation among the persons interested, for judicial determination thereof.

The civil court seised of a matter under sec. 18 is a court with a special jurisdiction and cannot direct a reference to itself nor proceed on the footing that a reference has not been made when it ought to have been made, (u). The powers vested in a court under Order I r. 10 C. P. C. do not empower the civil court to add parties or to an amendment to be made before the Collector. It can only permit amendment to be made before it, (v). Court cannot allow an amendment which will have the effect of introducing a matter which had not been referred to by the Collector. Therefore it is open to the claimant to raise question of compensation by way of specific pleading in court, (w).

Classes of reference :—The Act provides for two classes of reference to the judge and the judge can decide only those things which arise out of these references. The first class of reference is to award compensation under s. 15 of Act X of 1870 (now section 18 of Act. I of 1894), the second class of reference is for apportionment of compensation under s. 38 (now section 30). The result is that the Court has power under proper references to decide (1)

(r) *Raja Nilmonnee Singh v. Rambandhu Rai*, 7 Cal. 388.

(s) *Saibesh Chandra Sirkar v. Sir Bejoy Chand Mahatap*, 26 C. W. N. 506.

(t) *Ezra v. Secretary of State*, 32 Cal. 605 : 9 C. W. N. 454 :

(u) *Md. Ibrahim v. Land Acquisition Officer*, A. I. R. 1958, Andh. Pra. 226 : I. L. R. (1957) Andh. Pra. 816.

(v) *Ram Prasad Mills v. Collector, Akola*, 1957 Nag. L. J. 169.

(w) *State v. Kora Eapen*, A. I. R. 1957 Trav. Co. 157. *Padmanabhan v. Parvati*, A. I. R. 1957 Trav. Co. 202.

what compensation shall be awarded and (2) to whom it shall be paid, (x). The Act confers only a special and limited jurisdiction to a judge to deal with the two classes of questions, viz., the award of compensation and its apportionment among several claimants, (y).

Distinction between reference under sec. 18 and reference under sec. 30 :—The only distinction between reference under section 18 of the Land Acquisition Act and one made under section 30 thereof, is, that the reference under the latter section is made solely on the question of title by the Acquisition Officer, of his own motion (z), while the reference under the former section is made on the application of person interested in the compensation money and not by the acquiring officer of his own motion, section 18 deals *inter alia* with objection as to the persons to whom compensation is payable, (a). Section 30 deals with disputes as to the person to whom compensation is payable. Section 30 applies only to a reference made by the Collector of his own motion presumably before the final award is made, whereas sec. 18 deals with a reference upon an application made by a party, (b).

The three main points of distinction between ss. 18 and 30 L. A. Act are that s. 30 leaves the Collector with a power of discretion in the matter which he does not possess under sec. 18 ; that the subject matter of reference under sec. 30 is limited to cases in which Government is not directly interested and that section 18 alone contains a definite provision for limitation, (c). A person not a party to the proceedings can ask for a reference under s. 30 and not under s. 18, (d).

Legality of Reference :—Although the Collector has power to summon and enforce attendance of witnesses and to compel production of documents, the enquiry has been held to be merely administrative, (e). It is not judicial for it is not a final award binding on the claimant. The Collector has no jurisdiction to decide about the merits of the objections. He is bound to make the reference if all conditions laid down in the Act are fulfilled. If he refuses to make the reference a writ of mandamus can be asked under Art. 226 of the Constitution. In Punjab s. 18 has an additional amended clause (3) by which a refusal to refer can be taken in revision to the High Court under s. 115 C. P. C.

If a Collector acts wrongly as to the maintainability of the application for reference, it would always be open to the claimant to come to court to compel the Collector to make the reference. As in an application under sn. 45 of the Specific Relief Act, the Court will have to consider whether the Collector failed to discharge his statutory duty, equally so, if a reference was not a proper reference under sn. 18, because the very jurisdiction of the

(x) *Taylor v. Collector of Purnea*, 14 Cal. 423.

(y) *Ramalaksmi v. The Collector of Kistna*, 16 Mad. 321.

(z) *Hazura Singh v. Sundar Singh*, 97 P. R. 1919 : 53 I. C. 589.

(a) *Gobinda Ramee v. Brindaramee*, 35 C. 1104 : 12 C. W. N. 1039.

(b) *Saibesh Chandra v. Sir Bejoy Chandra Mahatap*, 26 C. W. N. 506 (509).

(c) *Nanak Chand v. Piranditta*, 43 P. L. R. 153 : A. I. R. 1941 (L) 268.

(d) *Narayan Das v. Kashinath Pant*, A. I. R. 1968, Orissa 94 (A. I. R. 1958 Orissa 98 and A. I. R. 1961 Orissa 39. overruled).

(e) *Koka Bai v. L. A. Collector*, A. I. R. 1956, Punj. 336.

court to hear a reference depends upon a proper reference being made under sn. 18, and if the reference is not proper, there is no jurisdiction of the court to hear it, (f).

Reference presupposes valid award :—It should also be noted that every reference presupposes a valid and legal award by the Collector ; It is well known that until an award is announced or communicated to the parties concerned it cannot be said to be legally made. In the absence of a valid award the civil court has no jurisdiction to take any proceeding on a reference made to it, (g). When land actually taken by Government is different from that mentioned in the declaration issued under the Land Acquisition Act the proceedings of the Collector are void and there can be no valid reference to the civil court, (h). An application made before the award is given by the Collector cannot be treated as one for reference to Court under section 18 of the L. A. Act, (i).

Conditions precedent to a valid reference :—Section 18 provides that any person interested, who having not accepted the award, desires to have an adjudication of the claim by the Court, should, within the period of limitation prescribed in the proviso to that section, do certain things viz., firstly : he must make a written application to the Collector : secondly : that written application should require the Collector to refer the matter for the determination of the Court, whether the objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested ; Thirdly : such application shall state the grounds on which objection to the award is taken. These are the conditions prescribed by the Act for the right of the party to a reference by the Collector to come into existence. They are the conditions to which the power of the Collector to make the reference is subject. They are also the conditions which must be fulfilled before the Court can have jurisdiction to entertain the reference. As was said by the Judicial Committee of the Privy Council in *Nusserwanjee Pestonjee v. Meer Mynoodin Khan*, (j), "whether jurisdiction is given to a court by an Act of Parliament or by a regulation in India (which has the same effect as an Act of Parliament) and such jurisdiction is only upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with in order to create and raise the jurisdiction, for if they be not complied with, the jurisdiction does not arise." The same case is also an authority for the proposition that "the compliance need only be substantial so as to be intelligible and clear."

Several references on same subject :—There is no hard and fast rule as to how, when several references arise out of the same land acquisition proceedings, are to be disposed off. A joint or separate hearing may be given according to justice and exigencies of the circumstances. Generally

(f) *G. J. Desai v. Abdul Majid Kaori*, A. I. R. 1951 Bom. 156 ; *State of Rajasthan v. L. D'Silva*, A. I. R. 1959 Raj. 44.

(g) *Macdonald v. The Secretary of State*, 19 P.L.R. 1909 : 123 P. R. 1908 : 4 I.C. 914.

(h) *Gajendra Sahu v. Secretary of State*, 8 C. L. J. 39.

(i) *Bago v. Roshun Beg*, 92 I. C. 484 : 1926, A. I. R. (L) 321.

(j) *Nusserwanjee Pestonjee v. Meer Mynoodin Khan*, 6 M. I. A. 134 (at p. 155).

valuation cases are disposed off first but if that results in injustice then apportionment matters may be given the precedence, (k).

Payment does not debar reference :—It has been pointed out in *Miran Baksh v. Feroze Din*, (l), that the actual payment of the compensation awarded is no part of the Collector's award and is not necessary to the completion of it ; the award is complete as soon as the Collector apportions the compensation among the parties concerned. The mere fact that the compensation money awarded under the L. A. Act has been paid out to party does not oust the jurisdiction of the civil court to entertain a reference duly made under the L. A. Act, (m). The fact that the compensation awarded under the L. A. Act is withdrawn by the party to whom it was awarded does not affect the right of the party who is entitled to receive it to have a reference made to the court under section 18 of the L. A. Act, (n).

Deposit of money is not necessary for reference :—The deposit of the moneys in court is not a condition precedent to the making of the reference by the Collector and the court has jurisdiction to entertain the reference without the deposit of the compensation money, (o)

It is inconceivable that the legislature could have intended that deposit in court should be a condition precedent under section 18 of the L. A. Act. Court has no jurisdiction to demand deposit. S. 18 does not empower the Court to call upon the Land Acquisition Officer to deposit the amount of compensation though the officer is improperly disbursing the amount contrary to provisions of s. 31(2) of the Act ignoring that there was a dispute as to the person entitled to the same, (p).

Demand for reference imperative :—The word "require" implies compulsion. It carries with it the idea that the written application should itself make it incumbent on the Collector to make a reference. It is clear from the section that those formalities prescribed by section 18 are matters of substance and their observance is a condition precedent to the Collector's power of reference. So it was held *In re Land Acquisition Act and In re matter of Government and Nanu Kothare*, (q). that an attorney's letter to the following effect, viz., "We have the honour on behalf of our clients to state that they do not accept the said award. We will send you in due time a formal request to refer the matter for the determination of the High Court under section 18 of the L. A. Act," is not an application for reference. Where on a compulsory acquisition of property a person sends a letter to the L. A. Officer stating that the compensation awarded to him is inadequate and that unless the property is released or proper compensation awarded, he would have the acquisition declared void in a civil court, that does not amount to an application for reference under section 18 of the L. A. Act, (r).

(k) *Provash Chandra v. Rabindra Nath*, A. I. R. 1951 Cal. 392.

(l) *Miran Bux v. Ferozedin*, 232 P. L. R. 1012 ; 17 I. C. 395.

(m) *Jogesh Chandra Roy v. Yakub Ali*, 17 C. W. N. 1057.

(n) *Rahit Sahu v. Mahadeo Choudhury*, 1920 Pat. 129 ; I. P. L. T. 143 : 56 I. C. 125.

(o) *Gangadas Mulji v. Haji Mahomed Jalal*, 42 B 54 : 18 Bom. L.R. 826 : 36 I. C. 433.

(p) *Syed Mohammad Badralam v. Rev Div Officer, Madurai*, (1967) 1 M L J. 327.

(q) *In re matter of Government and Nanu Kothare*, 30 Bom. 275.

(r) *Samuel Burje v. Improvement Trust, Lucknow*, 73 I. C. 127 ;

In *Secretary of State v. Hakim*, (s), the Collector made the award on 7. 6. 1912 and on 11. 7. 1912, a somewhat vague petition on unstamped paper was presented to the Collector by all the claimants. The petition was returned on the ground that it was unstamped and did not specify the field areas to which it related. On the 23rd July, 1912 one of the claimants presented a written objection to the award, but in it he merely asked the Collector to revise his award and grant him further compensation. The Collector rejected the application as time barred. On the 14th August, 1912, another claimant applied to the Collector practically for a review of his award. The application was also rejected as time-barred. The remaining claimants, said to be minors, whose mother was acting as guardian, made no application after the unstamped petition of the 11th July, 1912. It was held that the civil court had no jurisdiction to deal with the case of the claimants (1) because there was no application by any one of the claimants asking the Collector to take action under section 18 of the Act, (2) because the petitions made by the claimants were time-barred. An application to a Collector which does not contain any requisition that the matter of the award should be referred for the determination of a court, on the grounds on which objection to the award is taken but merely requests him that the matter relating to the compensation may be postponed till the final decisions as to the propriety or legality of the acquisition has been settled by a competent court, is not an application in compliance with the requirements of section 18 of the L. A. Act and a reference made by a Collector on such an application does not confer jurisdiction on the District Judge to entertain the reference, (t).

Where a claimant after receipt of the award by the L. A. Officer presented a petition stating that he would not receive the amount but would contest the matter in the District Court, it was held that the statement implied a request to the officer to send the papers to the District Court and ought to be construed as a petition under section 18, (u).

The application requiring the Collector to make a reference need not be signed by the applicant himself. It is sufficient if it is signed by his pleader, (v).

Statement of grounds of objection for reference :—Though section 18(2) requires that the application for reference shall state the grounds on which the objection to the award is taken, there is nothing in the L. A. Act which requires the claimant to state the grounds in detail upon which in applying for a reference under section 18 of the L. A. Act, he claims a larger sum than that awarded by the Collector, (w). When an owner says : "I object to the award of the Collector and I wish a reference to be made to the Court"

(s) *Secy. of State v. Hakim*, 25 I. C. 448.

(t) *Sukbir Singh v. Secretary of State*, 49 All. 212 : 25 A. L. J. 35 : 97 I. C. 566 : 1926 A. I. R. (All) 766.

(u) *Krishnammal v. Collector of Coimbatore*, 99 I. C. 269 : 1927 A. I. R. (M) 282.

(v) *Hrishikesh Mitter v. State of W. Bengal*, 69 C. W. N. 287.

(w) *Mahananda Pal v. Secretary of State*, 24 C. W. N. 176.

and then adds in connection with one item of the property that the compensation paid for the different classes of lands is very low and also adds in connection with another item of property that the compensation for the walls and other buildings is too low, he does give grounds for the reference, (w-1).

Section 18(2) of the L. A. Act 1894, requires that any person interested, who having not accepted the Collector's award, requires the Collector to make a reference to the court, shall state the grounds on which objection to the award is taken. Such requirement is one of the conditions precedent to the obligation of the Collector to make the reference. But there is no express provision in the Act which expressly lays down that the claimant in question should be confined to those grounds by the court in determining his objection, (x). It should be carefully noted that unless an objection is specifically taken with regard to a matter stated in the award of the Collector, such question cannot be asked at the time of the hearing of the case before the court, (x-1). The jurisdiction of the Courts in Land Acquisition matters is a special one arising only when a specific objection is taken to the Collector's award and confined to the consideration of that objection. When, therefore, it is found that the only objection taken was to the 'amount of compensation,' the Court cannot consider an objection to measurement which is a distinct objection under the L. A. Act, (x-2). S. 18 in dealing with references to Court, contemplates four kinds of objection which are set forth in sub-section (1). Sub-sec. (2) requires the claimant to state the grounds of his objection. There is a sufficient compliance with the provisions of s. 18 (2) if the application for reference states on which of the four heads of objections detailed in sub-section (1) the applicant proposes to rely. Once it is ascertained that the objection taken is only on the amount of compensation, that alone, it is true, is the matter referred, and the Court has no power to determine or consider any thing beyond it. But that does not mean that when an objection to the amount of compensation has been taken, the Court has no jurisdiction to work out the amount of compensation in a manner different from that which has been adopted in the statement of objection. The Court would have jurisdiction to award compensation on a different or new basis in a proper case, though no express objection was taken on that basis and no specific claim for compensation to that effect was urged before the Land Acquisition Collector. The rule enacted in s. 18(2) is one of procedure rather than of jurisdiction, (x-3).

If the only objection is to the amount of compensation, that alone is the matter referred to and the Court has no power to determine or consider anything beyond what is referred. The question of title to the land acquired, is therefore, not relevant in a reference on the question of amount of com-

(w-1) *Secretary of State v. Jiwan Baksh*, 36, I. C. 213 : 67 P. R. 1916 : 180 P. W. R. 1916.

(x) *Rustonji B. Jijibhoy, In the matter of*, 7 Bom. L. R. 981.

(x-1) *Secretary of State v. Fakir Mohammad*, 45 C. L. J. 186.

(x-2) *Pramatha Nath Mullick v. Secy. of State*, 57 I. A. 100 : 57 Cal. 1148 (P. C.) : 34 C. W. N. 289 : 51 C. L. J. 154 : 1930 A. I. R. (P. C.) 64.

(x-3) *Revenue Divisional Officer, Vizagapattam v. Zamindar of Chemudu*, 1937 M. W. N. 773 : 46 L. W. 492 : 1937 A. I. R. (M) 902.

pensation only, (y). The Land Acquisition Act by s. 18 does not require particulars to be given. It requires only the ground of objection to be given, and by "grounds" is meant such of the four grounds mentioned in section 18(1) of the Act, (y-1).

An application for a Reference objecting to the amount of compensation awarded by the Collector is in order even if no amount is mentioned therein, (z). When the claimant in respect of land acquired under the L. A. Act, files a statement complaining that the valuation adopted was grossly inadequate and that he was "entitled to not less than Rs. 3,000/- for mauja lands and Rs. 2,000/- in respect of garden-lands" it cannot be said that the provisions of s. 9(2) of the Act have not been complied with so as to disentitle the claimant to pray for enhancement of the award.

If a claim for compensation for injurious affection on account of severance under the item 'thirdly' in section 23 of the L. A. Act has not been made in reply to a notice under section 9 of the Act, such a claim can not be made or allowed for the first time in a reference under section 18 of the Act, (a).

On acquisition of part of property and S. 49 :—When a part of a house is acquired but the owner expressed a desire for acquisition of the whole house, the procedure prescribed in s. 49 is to be followed. This procedure is distinct and separate from that prescribed in s. 18 and he has to apply before award is made. The Court cannot consider the pleas raised by the owners under s. 49 in enquiry under s. 18(1), (b).

Limitation for Reference :—The proviso of section 18(2) provides that every application for reference shall be made (a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award : (b) in other cases within six weeks of the receipt of the notice from the Collector under section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire, (c).

The word "notice" in cl. (b) of the proviso to section 18 is not restricted to "immediate notice" prescribed in section 12(2). If the word "notice" in cl. (b) of the proviso to section 18 be restricted to "immediate notice", it must follow that the Collector has no power to give any but immediate notice and that a late notice is bad. And if a late notice is bad and inoperative, what is the result ? Does the award of the Collector become void and so all his proceedings become abortive, if no immediate notice is

(y) *Secretary of State v. Shayamapada Banerjee*, 44 C. W. N. 411 : 187 I. C. 364 : 1940 A. I. R. (C) 56.

(y-1) *Mt. Bhagwati v. Mt. Ram Kali*, 66 I. A. 145 : I.L.R. (1939) All 460 : 1939 A. L. J. 564 : 1939 A. W. R. (P. C) 58 : 41 Bom. L. R. 1028 : 70 C. L. J. 23 : 43 C. W. N. 677 : (1939) 2 M. L. J. 98 (P. C.) : 1939 M. W. N. 894 : 41 P. L. R. 638 : 1939 C. W. N. 543 : 181, I. C. 211 : 1939 A. I. R. (P. C.) 133.

(z) *The Province of Bengal v. P. L. Nun*, I. L. R. (1945) 2 Cal. 27 : 49 C. W. N. 206 ; *Sri Lakshmi Narasimha Devaru v. Rev. Divisional Officer, Mangalore*, 62 L. W. 140 : 1949 M. W. N. 131 : A. I. R. 1949 Mad. 902 : (1949), 1 M. L. J. 283.

(a) *Special L. A. Officer, Karachi v. Hiranand*, I. L. R. (1941) Kar. 217.

(b) *State of Bihar v. Kundan Singh*, (1964) 3 S.C.R. 382 : A. I. R. 1964 S. C. 350.

(c) *Administrator General, Bengal v. The L. A. Collector, 24 Parganas*, 12 C. W. N. 241.

given by him as directed by sub-sec. (2) of section 12 ? There is no express provision in the Act stating that such shall be the result of a late notice.

According to cl. (b) of the proviso to s. 18 every application, requiring the Collector to refer the matter for determination of the Court, shall be made, in case where the party interested who has not accepted the award, was not present or was not represented before the Collector when the latter made his award "within six weeks of the receipt of the notice from the Collector" under s. 12(2) or within six months from the date of the Collector's award whichever period shall first expire. The words "whichever period shall first expire" are important because they afford the real clue to the interpretation of the clause. The alternative period of "six months from the date of the Collector's award" can expire first i. e., before the other period of six weeks from the receipt of the Collector's notice only when that notice has been given four months after that date, can hardly be "immediate notice." Nevertheless the clause in question does clearly contemplate the giving of such late notice and provides for the computation of the time of six weeks from its receipt for the purpose of limitation which is obvious from the words "whichever period shall first expire." The words obviously point to a late as to an immediate notice.

So far as the period of limitation provided for in cl. (b) of the proviso to s. 18 goes, it is made to run from the date of the receipt of the notice from the Collector, in which case it is six weeks or from the date of the Collector's award in which case it is six months whichever period shall first expire. That means that in any case the proceedings shall be final after six months from the date of the award. This evidently contemplates that a party interested should not sit quiet, waiting for the Collector's notice or plead want of it, but should in any case himself be vigilant. The longer period of six months is given him as an alternative, where the Collector has not himself been prompt. The lateness of the notice, cannot, therefore, affect the question of limitation.

From these considerations it follows, that the word "notice" as used in cl. (b) of the proviso to section 18 means notice, whether immediate or not. This construction brings all the material provisions into harmony with one another. The clause in question prescribes one of two periods of limitation for a party who has not accepted the Collector's award, either six weeks from the receipt of the collector's notice whether immediate or not, or six months from the date of the award, whichever period shall first expire. These last words show that the element of notice is an essential ingredient, so to say, of the two alternative periods and such notice may be immediate or not, *In the matter of Government and Nanu Kothare, (d).*

A Land Acquisition Officer made his award on 3rd September, 1909. One of the persons interested objected the next day to a part of the compensation being awarded to another claimant. But on 4th March, 1910, the Collector directed the disputed sum to be paid to the latter. The objector on the 21st March, 1910 moved the Collector by an application to make a reference under section 18 of the L. A. Act. It was held that the Collector's

(d) *In the matter of Government and Nanu Kothare*, 30 Bom. 275 ; *Administrator-General, Bengal v. The L. A. Collector*, 24 Parganas 12 C. W. N. 241.

award was complete on 3rd September, 1909, as soon as he apportioned the amount of compensation among the respective claimants and as the actual payment was not necessary to the completion of the Collector's award the application of the 21st March, 1910 was out of time and therefore barred by limitation under section 18(2) (b) of the L. A. Act, (e). An award written or signed by the Collector without being made in the presence of or communicated to the applicant is *qua* the applicant no award at all and the period of limitation of filing an objection to the award can only be computed from the date when the award is made within the applicant's knowledge, (e-1). When before the date of the award the Collector having passed an order that the party should go to the civil court, the muktear of the party ceased to take any further part in the proceedings before the Collector, and a reference was made more than six weeks after but within six months of the award, it was held that the reference was within time under section 18(2)(b) of the L. A. Act, (e-2). Where objections to an award are filed more than six months after the date of the award and after a reference has been made to the District Judge and the objections are forwarded to the District Judge who dismisses them summarily on the ground that they are barred by time, it is not open to the objector thereafter to file a suit for a declaration and reargitate the same question as the order of the District Judge is final, (e-3).

Limitation runs from "the date of award".—Following *Kooverbai Sorabji v. Assistant Collector, Surat*, (f), it was held in *Secretary of State v. Bhagwan Pershad* (f-1), that the expression "date of award" being indefinite the legislature means date of the filing of the award to be the date contemplated in clause (b) sub-section (2) of section 18. If limitation is to start it ought to start from the date of the filing of the award and not from the making of it. "An award is not 'made' within the meaning of sec. 18(2)(a) of the L. A. Act till it is drawn up and signed and consequently, the starting point of limitation under that sub-section is the date of the drawing up and signing of the award and not the date when it is settled what the award is going to be," (f-2).

But the Supreme Court in *Rajah Harish Chandra Raj Singh v. Dy. Land Acquisition Officer* (g), held that "where the rights of a person are affected by any order and limitation is prescribed for the enforcement of a remedy by the person aggrieved against the said order by reference to the making of said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned." So the limitation

(e) *Miran Baksh v. Feroze Din.*, 14 I. C. 537 ; 232, P. L. R. 1912 : 17 I. C. 395.

(e-1) *Hari Das Pal v. Municipal Board, Lucknow*, 16 O. C. 375 : 22 I. C. 652.

(e-2) *Mohendra Chandra Dutta v. Abhoy Charan Sarma*, 40 I. C. 355.

(e-3) *Sankara Prasad Pande v. Brij Mohan Pande*, I. L. R. (1946) All. 96 : 225 I. C. 67 : A. I. R. (1946) All. 246 : (1945) A. L. W. 362 : 1945 A. W. R. 321 : (1945) A. W. N. 315 : 1945 A. L. J. 525.

(f) *Kooverbai Sorabji v. Asstt. Collector, Surat*, 22 Bom. L. R. 1136 ; 59 I. C. 429.

(f-1) *Secy. of State v. Bhagwan Pershad*, 1929 A. I. R. (A) 769.

(f-2) *Leah Elias Joseph Solomon v. H. C. Stork*, 38 C. W. N. 844.

(g) *Raja Harish Chandra Raj Singh v. Dy. L. A. Officer*, A. I. R. 1961 S. C. 1500 : 1961 A. L. J. 650 ; 1962 (1), S. C. J. 696 : 1962(1), S. C. R. 676.

runs from the date of knowledge of the said order and not from the date of passing of the said order. See also A. I. R. 1952 Cal. 67 and *Kajana Lakshman Rao v. R. D. O., Rampel*, (g-1). The time taken for obtaining a copy of an award cannot be excluded in computing limitations under section 18 (2) of L. A. Act, (g-2). The decision of Rangoon case to the contrary in A. I. R. 1926 Rang. 135 is no longer good law being dissented by aforesaid decisions.

In the case of a person, who had no notice of the award, limitation would be six months from the date of his knowledge of the essential contents of the award under proviso (b) to sub-section (2) of s. 18, (h), question of acceptance of an award does not arise in case of a person not a party to the award and he is a person who has not accepted the award on the principle that in cases of such negative conditions leading to a particular legal result, the condition is deemed to be satisfied if the existence of the fact is or has been rendered impossible by the circumstances, (h-1).

Reference on time-barred application :—The Collector, whose position under the Land Acquisition Act, as held by the Privy Council in *Ezra's case*, is that of an agent to Government. Having made the reference on a time-barred application for reference, can it be said that he must be regarded as having waived his right or the right of his principal, the Government, to dispute that the reference was unauthorised and therefore illegal? The Collector's authority to make the reference as an agent of Government is restricted by the statutory conditions prescribed in section 18. The claimants can not plead ignorance of those conditions and the restricted nature of the Collector's authority. He cannot bind the Government by stepping outside the limits of the power given by section 18. If he does step outside, then his action is illegal and no waiver on his part can ever atone for the failure which the law required him to fulfil before his right to require the Collector to make a reference could come into existence. *In the matter of the Government and Nanu Kothare*, (i). It is not open to a Collector to waive the objection of limitation and it is always open to the Court to hold that an application to a Collector for reference could not form the basis

(g-1) *Kajana Lakshman Rao v. R. D. O. Rampel*, A. I. R. 1955, Mad. 660 : 1962(1) S. C. J. 696 : 1962(1), S. C. R. 676 : *Mudhia Chettiar v. Rev. Div. Officer* 1962(1) M. L. J. 107.

(g-2) *Kunhibi v. Land Acquisition Officer*, I. L. R. (1959) Ker. 1034 : A. I. R. 1960, Ker. 80 : A. I. R. 1926, Lah. 858 and A. I. R. 1939, All. 130 ; *Bodi Raj v. Dy. Commissioner, J. & K.*, A. I. R. 1961, J. & K. 62 follows A. I. R. 1954, Mad. 942 & A. I. R. 1954, Bom. 419.

(h) *Sailen Ghosh v. L. A. Collector*, Cal. 73 C. W. N. 543 following *Raja Hartsh Chandra Singh v. Dy. L. A. Officer*, A. I. R. 1961, S. C. 1500 and *State of Punjab v. Mt. Quiser Jehan Begum*, A. I. R. 1963, S. C. 1604 and *Sundar Lal v. Paramsukh Das*, A. I. R. 1968, S. C. 366 (371) and *Dr. G. H. Grant v. The State of Bihar*, A. I. R. 1968, S. C. 237.

(h-1) *Sashi Coomarr Banerjee v. Mrs. D. J. Hill*, A. I. R. 1949, F. C. 135 (141) and *Srimati Renula Bose v. Rai Monmotho Nath Bose & Ors.*, 49 C. W. N. 491, (P. C.)

(i) *In the matter of Government and N. Kothare*, 30 B 275 ; *Collector of Akola v. Anand Rao*, 7 N. L. R. 88 ; 11 I. C. 690.

of reference under sections 18 and 19 in as much as it was barred by time, (i-1).

The L. A. Act gives exceptional powers to the Collector and section 5 of the Limitation Act has no application to proceedings under the L. A. Act, (j). So it has been held that the final determination of the question whether an application under sec. 18 L. A. Act. is barred by the time or not must be made by the District Judge. The L. A. Officer has no jurisdiction to refuse to make the reference sought to be made even if in his opinion the application is not in time under cl. (a) or cl. (b) of sub-sec. (2) of sec. 18 of the Act, (j-1). This decision has been overruled in *Pannalal v. Collector, Etah*, (j-2), where it has been held that if the application is not made within the prescribed time the Collector may refuse to make the reference.

But the Allahabad High Court has held in *Secy. of State v. Bhagwan Prasad*, (k), that where a person interested made a time-barred application under sec. 18 of the L. A. Act and without noticing the point of limitation the Collector forwarded the reference to the civil court, it is not open to the Collector or the Secretary of State to say that the reference was wrongly made although the ground for saying so may be that the application by the owner was belated, i. e., in contravention of sec. 18(2). It has been held that the Court does not sit in appeal over the Collector and the Act does not give any authority to the "Court" either in express terms or by implication to go behind the reference and to see whether the Collector acted rightly or wrongly. It is the province of the Collector alone to decide for himself whether he should make the reference or refuse to do so. The decision on a question of limitation in an application under s. 18 rests with the Collector and not with the District Judge. S. 19 also indicates that the question of limitation is to be decided by the Collector. The District Judge cannot sit as a Court of Appeal over the Collector when the latter has come to the conclusion that the application is made within time. The function of the District Judge is confined to giving a decision on objections raised, (k-1). The District Judge cannot go into the question of limitation, (k-2).

The Collector must refer a question of title if required to do so by an application received within the prescribed time, but if an application is received after that time, he then has the option of referring the matter to the District Judge or refusing to do so and if the Collector, while forwarding the

(i-1) *Mian Ghulam Mohiuddin v. Secretary of State*, 24 I. C. 379 : 48 P. R. 1914 : 208 P. L. R. 1914.

(j) *Kristo Singh Sardar v. Secretary of State*, 8 P. L. T. 710 : 103, I. C. 295 : 1927 A. I. R. (Pat) 333.

(j-1) *Ahmed Ali Khan v. Secy. of State*, 9 O. W. N. 234 : 137, I. C. 58 : 1932, A. I. R. (Oudh) 180.

(j-2) *Panna Lal v. Collector, Etah*, I. L. R. (1959) I, All. 628 : A. I. R. 1959 All. 576 : 1959 All. L. J. 375 (F. B.)

(k) *Secy. of State v. Bhagwan Prasad*, 1932 A. L. J. 752 : 141 I. C. 621 : 1932 A. I. R. (All) 597.

(k-1) *Attar Singh v. Secretary of State*, 189 I. C. 534 : 1940 A. I. R. (Pesh) 35.

(k-2) *State of U. P. v. Abdul Karim*, A. I. R. 1963 All. 566 ; 1. L. R. (1963) 1 All. 983 : 1963 All. L. J. 368

reference himself mentions that the application is received after the prescribed time it is to be presumed that he is intentionally making a reference under sec. 30 of the L. A. Act, (k-3).

The court has power when a reference is made under section 18 of Land Acquisition Act, to go into the question of limitation. This is specially so in a case where the Collector himself has included the question of limitation as a part of the reference in his letter accompanying the reference and has not decided the question himself. When the Land Acquisition Officer purports to Act under Part III of this Act he acts as a judicial officer and not merely as an agent or mouth piece of the Government, (l). The District Court has jurisdiction to decide whether the reference was made upon an application beyond the time limit and if it finds that it was so made, dismiss the reference. The full bench decisions of Kerala and Allahabad High Courts and Ezra's case should be followed, (m).

When the last day for reference is a holiday, S. 4 Lim. Act is applicable :—It is a moot question whether a claimant is entitled to a deduction of time of the holidays from the "six weeks" period of limitation. There is a conflict of judicial opinion as to whether the provisions of the Limitation Act would apply to the special period of limitation prescribed in section 18 of the Land Acquisition Act. This is a special Act and it would appear from the decision of the Bombay High Court (n), that the provisions of the Limitation Act apply to special Acts. The Madras and the Calcutta High Courts have taken a different view, (n-1). The Madras and the Calcutta High Courts have respectively held that the provisions of the Limitation Act do not apply to Acts. Also see *In the matter of the Government and Nanu Kothare*, (n-2).

After the amendment of section 29(2) (a) of the Limitation Act by the Limitation (Amendment) Act of 1922, the provisions contained in section 4, sections 9 to 18, and sec. 22 of the said Act have been made applicable only in so far as and to the extent to which, they are not expressly excluded by any special or local law. It therefore follows that section 4 of the Limitation Act not having been expressly excluded by the L. A. Act. I of 1894, applies and an application made on the day on which the Court re-opens after the expiration of the period of limitation, is not time barred. Section 29(2) of the Limitation Act of 1963 is to the same effect. See also s. 10 of the General Clauses Act X of 1897.

Time taken for copy of the award not excluded from computation :—In *H. N. Burjorjee v. Special Collector, Rangoon (o)*, it was held that under

(k-3) *Nanakchand v. Piranditta*, I. L. R. (1942) Lah. 50. : 198 I. C. 132 : 43 P. L. R. 153 : A. I. R. (1941) Lah. 268.

(l) *Subramania Chattiari v. The Collector of Coimbatore*, 1945, M. W. N. 775 : (1945) 2 M. L. J. 559.

(m) *Kochukunju Padmanavan v. State of Kerala*, A. I. R. 1964 Ker. 3 : I. L. R. (1962) 1 Ker. 580 (F. B.)

(n) *Gurucharya v. The President of the Belgaum Town Municipality*, 8 B. 529.

(n-1) *Veeramma v. Abbiah*, 18 M. 99 and in *Girija Nath Roy v. Patani Bibee*, 17 C. 263 ; *Nagendra N. Mullick v. Mathura Mohan Porhi*, 18 C. 368.

(n-2) *In the matter of Government and Nanu Kothare*, 30 B. 275.

(o) *H. N. Burjorjee v. Special Collector, Rangoon*, 5 Bur. L. J. 26 ; 96 I. C. 110 : 1926 A. I. R. (R) 135.

section 12 of the Limitation Act a person who makes an application under section 18 of the Land Acquisition Act for a reference to be made to the Court is entitled to exclude from the period of limitation the time spent in obtaining a copy of the Collector's award. But this view has been dissented from in the case of *Nafis-ud-Din v. Secretary of State*, (o-1), where it has been held that section 12 of the Limitation Act does not apply in computing the period of limitation prescribed for an application under sub-section (1) of section 18 of the L. A. Act, 1894, and therefore the time requisite for obtaining copy of the award cannot be deducted in computing the period laid down by sub-section (2) of that section. *Nafis-ud-Din's* case has been followed in *Kashi Prasad v. Notified Area, Mahoba* (o-2), where it has been held that s. 29 of the Limitation Act does not apply to an application for review of judgment as contemplated by sec. 12 of the Limitation Act. Therefore the applicant is not entitled to deduction of the time occupied in obtaining a copy of the award, (o-3).

The Land Acquisition Act mentions no such thing as a judgment of the Collector making an award under the Act. If the claimant objects to the award, he ought to know why he objects. The Collector's reasons are not necessary for his objection. Further, section 12 of the Limitation Act, which alone can possibly apply, speaks of a copy of the award not of the Collector's judgment, (p).

Equitable or ethical considerations can not weigh with Courts in interpreting limitation statutes which are technical in their nature, (p-1).

No abatement of proceedings and no application of 0.22 C. P. C. on death of a party :—It is obvious enough that reference proceedings under s. 18 are not such proceedings. For the purpose of Order 22 of C. P. Code a "suit" must be taken as one meaning a suit instituted by the presentation of a plaint as laid down in the Explanation to section 3 of the Limitation Act. If the reference proceedings had been such proceedings then there would be no necessity of inserting in the Act Sn. 53 laying down that "Save in so far as they may be inconsistent with anything contained in this Act, the provision of Civil Procedure Code shall apply etc...." Once a reference is made under s. 18, the Court has to make an award under s. 26 no matter whether the person at whose instance the reference has been made appears or fails to appear before the court or fails to produce evidence in support of his objection. It is clear that there can not be any dismissal or abatement of a reference proceeding. It follows therefore that the application under 0. 22 of the Code is altogether inconsistent with the very nature and scope of the proceedings under s. 18. When a party to the reference is dead it is the duty of the Government to supply to the court the names and addresses of

(o-1) *Nafis-ud-Din v. Secretary of State*, 9 Lahore 244.

(o-2) *Kashi Prasad v. Notified Area Mahoba*, 54 All. 282 : 143 I. C. 111 : 1932, A. I. R. (All) 598.

(o-3) *Secretary of State v. Karim Bux*, 1939 A. L. J. 85 : 1938 A. W. R. 833 : 180 I. C. 882 : 1939 A. I. R. (All), 130 ; *Kunhibi v. Land Acquisition Officer, Kozhikode*, I. L. R. (1959) Ker. 1034 : A. I. R. 1960, Ker. 80 : 1959, Ker. L. T. 590.

(p) *In the matter of Government and Nanu Kothare*, 30 B. 275 (288).

(p-1) *Narayanappa Naidu v. Revenue Div. Officer*, A. I. R. 1955 Mad. 23 (D. B.).

the legal representatives of the deceased to enable the Court to issue fresh notices under s. 20, (g).

Limitation for being added as a party :—Art. 171 and 176 (corresponding to Articles 121 and 120 respectively of the Act of 1963) Limitation Act applies only to suits and proceedings. If Order 22 C. P. C. can properly be applied to proceedings which are not suits or proceedings, then the relevant article of limitation would be the residuary article 181 (now 137) of the Limitation Act, (g).

No extension for minority :—Under section 18 of the L. A. Act no extension of time is allowable on the ground of minority, (r):

Scope of enquiry under sec. 18(1) :—The objections which the Court can consider on a reference made to it may be either : in respect of the measurement of land, the amount of compensation, the persons to whom it is apayable and the apportionment of compensation among different persons. In an enquiry on a reference under sec. 18, the Court cannot allow the owner to raise the plea under sec. 49, namely, that the whole of the property should be acquired. Such a claim must form the subject-matter of a different proceedings taken by the owner under sec. 49, (s).

Reference when Government claims the land as owner :—It has been held in *Imdad Ali Khan v. Collector of Farakkabad* (t), that the Collector has no power to make a reference to the District Judge (under section 15 of Act X of 1870), in case in which he claims the land in question on behalf of the Government or the Municipality and denies the title of other claimants and the District Judge has no jurisdiction to entertain and determine such reference. The reason for holding that in such cases no reference lies is that "the special jurisdiction of the Judge for this purpose is intelligible enough. It was never intended to be extended to a case in which the Collector claims the land on behalf of the Government or Municipality and denies the title of other claimants to the land. Such position would be inconsistent with the applicability of the Act, for it denies the right of any person to compensation. It seems a contradiction in terms to speak of the Collector as seeking acquisition of land, when he asserts that the land is his own, and that no other person has any interest in it" (t-1). Where Government issues a notice under s. 9 of the L. A. Act in respect of land of which it claims to be the owner, whether or not it admits that some other person holds a subordinate interest in it, it is open to any person claiming an interest in the land to assert that interest and if he does so the Collector is bound to enquire into the extent of the interest in proceedings under section 11 of the Act. If however the Collector decides the question of title in dispute between a claimant and the Government against the former, the question cannot form the subject of a reference to a District Judge under section 18 of the Act. The claimant's remedy in such a case is by a separate sut, (t-2).

(g) *Abdul Karim v. State of M. P.*, A. I. R. 1964 M. P. 171.

(r) *Secretary of State v. Hakim*, 25 I. C. 448.

(s) *State of Bihar v. Kundan Singh*, A. I. R. 1964, S. C. 350 : (1964) 3 S. C. R. 382.

(t) *Imdad Ali Khan v. Collector of Farakkabad*, 7 A. 817.

(t-1) *The Crown Brewery, Moussourie v. The Collector of Dehra Dun*, 19 All. 339.

(t-2) *Mohammad Waheb v. Secretary of State*, 24 O. C. 197 : 8 O. L. J. 426 : 64 I. C. 93.

In *Babujan v. Secy. of State* (u), it has been made clear that when the Government or Municipality or other local authority for whose ultimate benefit the land is being acquired, claims to be the full owner, and no other person has any sort of right in the land, there is nothing to be acquired. But when the claim of the Municipality or other local authority is to a restricted right, there is nothing in the Act to prevent the manner it chooses.

There is nothing to limit the scope of the Act so as to exclude from its operation all cases in which a Municipality or other local authority, for whose ultimate benefit the Government may wish to take action, happens to have some interest in the land to be acquired.

In the case *Mangaldas Girdhardas Parekh v. The Asst. Collector of Prantij Prant*, (v), the facts were that the claimant owned a bungalow which stood within the limits of Ahmedabad cantonment. The Government having acquired the bungalow under the L. A. Act the claimant was awarded Rs. 4,500 as compensation for the super-structure of the bungalow, and Rs. 18,634 were awarded to Government as compensation for the land on the footing that the land being within cantonment limits belonged to Government. The claimant appealed to the High Court, contending first that the super-structure was undervalued and secondly that he was entitled to the full compensation for land also in as much as under the provisions of the L. A. Act the court had no jurisdiction to try any question of title or apportionment between the claimant and the Government. It was held that in a proceeding under the L. A. Act, it is competent to the court to adjudicate on any question of title to the land acquired, or to apportion the amount of compensation for it, as between the claimant and Government. Under the L. A. Act what is acquired is the land which includes all that is stated in cl. (a) sec. 3 of the L. A. Act. But in the case of any land with super-structure thereon in which the Government have an admitted interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government, it is open to the Government to acquire that property under the Act. When it comes to a question of determining the market-value of the property acquired and the sum payable as compensation for the property acquired to the person having a limited interest in the property, it is open to the court to determine what sum is really payable to the limited owner. The question of title in such proceedings is really incidental to the question of the determination of the market value of the interest of the claimant in the land acquired. See also *Government of Bombay v. Esufali Salebhoy* (w), where on a reference by the Collector to the District Judge under section 18, title to land is claimed on behalf of the Government and such title is disputed by claimant, the District Judge can decide the question of title on evidence, (x). Where in respect of certain bungalows, both the

(u) *Babujan v. Secy. of State*, 4, C. L. J. 256.

(v) *Mangaldas Girdhardas Parekh v. The Assistant Collector of Prantij Prant, Ahmedabad*, 45 B. 277.

(w) *Government of Bombay v. Esuffali Salebhoy*, 12 Bom. L. R. 34 ; 5 I. C. 621 ; *Deputy Collector, Calicut v. Aiyavu Pillai*, 9 M. L. T. 275 ; 9 I. C. 341 ; *Bejoy Kumar Addy v. Secretary of State*, 25 C. L. J. 476 ; 39 I. C. 889.

(x) *Makhan Lal v. Secretary of State*, 1934, A. L. J. 32 ; 1934 A. I. R. (All) 260.

Government as well as the owner, claimed the ownership of the title, and the Collector found the Government to be the owner of the site and awarded compensation for buildings alone. A reference to the District Judge in respect of that value under s. 18 of the L. A. Act is competent and the District Judge has jurisdiction to deal with such a reference, (y). Where a particular right is claimed by a person interested and Government asserts its own title to that right, the question of title can be gone into in order to determine the interest of the claimant. This adjudication of the claimant's title, necessarily results in adjudication of Government's title but is made at the instance of the claimant and not at the instance of the Government. It follows that although Government can neither be a claimant nor a 'person interested' under the Act, yet its title can be decided, if an adverse title is set up by a claimant.

Appeal Review and Revision :—Appeal is provided for in s. 54 of the L. A. Act, from an award to High Court.

If the order of a Special Judge is not appealable, a revision lies to High Court under Sn. 115 of C. P. Code. When a Judge acts beyond his jurisdiction, High Court can interfere in revision.

When a person is a party to the Land Acquisition proceedings, it is no doubt open to the Land Acquisition Officer to examine and enquire in the first instance as to whether he had a true claim on the basis of which compensation was payable. But once the claim is rejected as being fictitious the proper procedure would be to mention his name as a claimant and refer it under s. 18. Refusal to make a reference on his own finding is denying the exercise of a jurisdiction vested in him under s. 18 and revision under s. 18 lies.

A person not a party to the proceedings can ask for a reference under s. 30 and not under s. 18, (z).

A Collector acting under this section can not review his own order. Sn. 53 of this Act applies to Court and not to a Collector who is not a court and as the Civil Procedure Code is applicable only to a Court. Only C. P. and Berar Act, Act VII of 1949 provides for revision to High Court under Sn. 115 C. P. C. from an order of Collector.

Court fee payable on Reference :—It is a petition to the Collector and is governed by Sch. II, Art 1 (b) of Court Fees Act local amendments. Under Bengal Act it is 75 paise.

Valuation and Court fee payable on appeal :—Every award is deemed to be a decree under Sn. 26(2) of this Act, Hence *ad valorem* Court fee is payable on a memorandum of appeal against an award according to Art. 1. Sch. 1 of Court Fees Act, (a). Court fee is payable on the difference of amount claimed in appeal. Sn. 8 and Art I. Sch. I of the Court Fees Act govern an appeal *vis-a-vis* apportionment in a reference when a larger sum than the

(y) *Secretary of State v. Allahabad Bank Ltd.*, 1938 A. L. J. 116 : 1938, A. W. R. (H.C.) 755.

(z) *Narayan Das v. Kasinath Pani*, A. I. R. 1968 Orissa 94, (A. I. R. 1952 Orissa 98 and A. I. R. 1961 Orissa 39 overruled).

(a) *Braja Kewat v. Madanlal*, A. I. R. 1951 Pat. 603,

award is claimed by the appellant (b). It has been held that *ad valorem* Court fee is to be paid on the difference of amount claimed besides it is competent for the court to adjudicate on any question of title to land acquired or to apportion amount claimed (c).

Statutory compensation—Solatium not a part of award :—The 15 per cent solatium to be paid to a party on his successful claim of market value under s. 23(2) of the Act, in consideration of the compulsory nature of the acquisition. It is a part of compensation but not a part of the award. Court fee is payable on the difference of amount claimed in appeal under s. 54 but not on the 15 per cent solatium payable thereon or in case of any difference in solatium (d). When an application for payment of compensation awarded to the claimant is dismissed, the court fee payable on memorandum of appeal is only Rs. 2/- and not on the amount in deposit. But when a share of the money is claimed, *ad-valorem* court fee is to be paid, (e). No court fee is payable on applications for compensation on acquisition of property for public purpose under Sn. 19 Clause XXII of the Court Fees Act, before the Collector or the L. A. Judge. Neither solatium under s. 23(2) nor interest under s. 28 forms part of the award (d).

West Bengal Land (Requisition and Acquisition) Act II of 1948 :—In *Kalidasi v. The L. A. Collector, Suri*, (f), it was held that the Collector is a 'tribunal' under Art. 227 of the Constitution and that there being no prescribed manner requiring service of notice by the Collector as contemplated in Sn. 7(2) cl. (aa) (ii) of the West Bengal Land (Requisition and Acquisition) Act 1948, the first part of proviso (b) of Sn. 18(2) of this Act would not be operative, as a result the application for reference under the statute can be filed within the other or longer period prescribed in the last part of Sn. 18, namely six months from the date of Collector's award.

Interference by Supreme Court :—Ordinarily the Supreme Court does not interfere with valuation and compensation, but when there was wrong application of principles or important points affecting valuation have been overlooked or misapplied, the Court will interfere. In a case where the Government by an agreement agreed to pay a higher rate of valuation but without complying with Art. 229(1) of the Constitution, the Court below ignored the same as it was non-enforceable, the Supreme Court held that although the agreement was not enforceable because of non-compliance with

(b) *Ananda Lal Chakravarty v. Karnani Industrial Bank Ltd.*, 59 Cal. 528 ; *Ganesh Das v. Kantha*, A. I. R. 1935 Lah. 448 ; *Satya Charan Sur v. State of West Bengal*, 1959 Cal. 609.

(c) *Mangaldas Girdharadas Parekh v. Asstt. Collector of Prantij Prant, Ahmedabad*, 45 Bom. 277.

(d) *Suryanarayana Rao v. Rev. Div. Officer*, A. I. R. 1969 Andh. Pra. 55 (F. B.) followed in *Kasireddy Appala Swamy v. Special Tehsildar, Central Ry.*, A. I. R. 1970 Andh. Pra. 139 (F. B.) ; *Brahmanandan v. Secy. of State*, 53 Mad. 48 ; A. I. R. 1930 Mad 45 dissented from ; *Percival v. Collector of Chittagong*, 30 Cal. 515 ; *Mytheen Kunju v. The State*, A. I. R. 1955 Tra. Co. 110 not followed ; *Banshidhar Marwari v. Secy. of State*, A. I. R. 1927 Cal. 533 ; 54 Cal. 312 applied.

(e) *Md. Suleman v. Ganwanthilal*, A. I. R. 1931 Lah. 243.

(f) *Kalidasi Dasi v. The L. A. Collector, Suri*, 66 C.W.N. 446.

Art. 229(1), still it has a great probative value regarding rate of compensation and the Court below was wrong in ignoring it (g).

Collector's statement to the Court

19. (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand.—

- (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;
- (b) the names of the persons whom he has reason to think interested in such land ;
- (c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11 ; and
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested, respectively.

State Amendments

1. **C. P. and Berar** :—*Act III of 1950 Sn. 293 and Sch., 1, para 7, (1-6-1960).*

In clause (c) of Sn. 19, after the words "amount of compensation" the words "and of cost (if any)" shall be deemed to be inserted.

2. **Madhya Pradesh** :—*C. P. Act II of 1922, Sn. 239 and Sch., para 5, (1-7-1937).*—Same as in C. P. & Berar Act III of 1950.

[See under Part III, Chapter VIII, M. P. (3).]

3. **Maharashtra** :—Same as in C. P. and Berar Act III of 1950.

4. **Punjab** :—*Punjab Act IV of 1922, Sn. 59 and Sch., II, para 8* :—Same as in C. P. and Berar Act III of 1950.

[See under Part III, Chapter XII, Punjab (4).]

5. **Uttar Pradesh** :—*U. P. Act II of 1959, Sn. 376 and Sch. II, Para 8* :—Same as in C. P. and Berar Act III of 1950.

6. **Jubbulpur (City)** :—*C. P. and Berar Act III of 1950, S. 293 and Sch. I, para 7.*

(See above).

7. **Nagpur (City)** :—Same as in Jubbulpur (City).

8. **Mysore** :—*The Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961* :—Amendment of Section 19 of Central Act 1 of 1894.

(See under Part III, Chapter X, Mysore).

Notes

Legislative history :—This was section 18 of the old Act X of 1870 which ran as follows :—

- “18. In making a reference under section 15, the Collector shall state for the information of the Court, in writing under his hand,
- (a) the situation and extent of the land needed,
 - (b) the names of the persons whom he has reason to think interested in such land,
 - (c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, the amount of compensation tendered for the land under section 11, or if no claimant has attended pursuant to the notice mentioned in section 9, the amount of compensation which the Collector is willing to give to the persons interested, and
 - (d) the ground on which the amount of compensation was determined.”

Reference may be claimed as of right :—To claim reference is a right inherent in every person whose land is acquired. It has been seen in *Ezra v. Secretary of State*, (a), that the award in which the enquiry results is merely a decision binding only on the Collector (as to what sum shall be tendered to the owner of the land) and is subject to the land-owner's right to have the matter referred to the Court. Section 18 enables “any person interested, who has not accepted the award” to “require” a reference ; and section 3(b) defines “persons interested” as including all persons claiming an interest in the compensation. As long as the application sets out a claim to an interest in the compensation it is no part of the Collector's duty to decide whether the claim is well-founded and is not authorised to make the reference merely because he may think it is not. The question the Collector may have to decide under section 18 is whether it is in proper form and whether it is in time. It has been held in *Administrator-General of Bengal v. The L. A. Collector*, (b), that under section 18 any person interested may require that the matters covered by the award be referred by the Collector for the determination of the Court provided that the application is made, if the person was present or represented before the Collector at the time when he made his award, within 6 weeks from the date of receipt of the notice under sec. 12(2) or within 6 months from the date of the Collector's award whichever period shall first expire, and if he is within time, and his application is otherwise proper in form and has satisfied the requirements of section 18, the Collector was bound as enjoined by the section to initiate judicial proceedings contemplated by Part III of the Act.

Collector's right of refusal to refer :—In *P. Aiyar v. L. A. Collector, Palghat*, (c), the order of the Collector on a petition of reference was “these

(a) *Ezra v. Secretary of State*, 32 Cal. 606 (P. C.).

(b) *Administrator-General, Bengal v. The L. A. Collector*, 12 C. W. N. 241.

(c) *Parameswara Aiyar v. Land A. Collector, Palghat*, 42 Mad. 231.

persons do not appear to be the accredited representatives of the devaswom. The petition is, therefore, rejected." The High Court in revising that order held "that the order is illegal, hardly admits of doubt. Section 18 enables any person interested, who has not accepted the award to require a reference, and section 3(b) defines 'persons interested' as including all persons claiming an interest in the compensation. As long as the application sets out a claim to an interest in the compensation, it is no part of the Collector's duty to decide whether the claim is well-founded ; and he is not authorised to make the reference merely because he may think it is not."

In *Administrator-General of Bengal v. The L. A. Collector, 24-Parganas (d)*, the award was made on 26th September, 1904. The Collector on the 11th October, 1904, on the representation of the Administrator-General, allowed time up to 1st November, 1904 to file the statement of claim. The statement of claim was filed on 1st November, 1904. The order passed on 1st December, 1904 was that "the Administrator General was not entitled to any compensation, his rights having been acquired by the Government ; his petition is rejected". The Administrator-General received notice of this order on 14th December, 1904. He filed a petition of reference on 23rd February, 1905. It was held that the Collector having allowed his award dated, 26th September, 1904 to be re-opened, and notice of his final order having been given on 14th December, 1904, which should be taken as a notice under section 12, the Administrator-General was entitled to six weeks' time from the latter date to file his application for reference. If it is assumed, however that the Collector's proceedings after the filing of the award on 26th September, 1904 were not warranted by law and that he was incompetent to reopen the original award, the A. G. could make the application for reference within six months of the original award. In either view of the case the Collector was bound as enjoined by the section to initiate the judicial proceedings contemplated by Part III of the Act.

Remedy for refusal of the Collector to refer :—There is a great divergency of judicial opinion as to whether the High Court has jurisdiction to revise the order of the Collector when he refuses to refer. The rviews held by the different High Courts are the following :—

(See notes under Sn. 18).

Calcutta view :—In deciding the question in *Administrator-General, Bengal v. L. A. Collector, (e)*, the Calcutta High Court observed : "the question which arises is whether the High Court has jurisdiction under section 622 C. P. C. (now sec. 115) or section 15 of 24 and 25 Vic., c. 104 to interfere. It is admitted that up to and including the time of making his award the Collector was, in no sense, a judicial officer and that the proceedings before him were not judicial proceedings, (f), and however irregular his proceedings were, we cannot interfere with his award made under section 11 of the Act. But where an application is made to the Collector requiring him to refer the matter to the Civil Court, the Collector may have

(d) *Administrator-General, Bengal v. The L. A. Collector, 24 Parganas*, 12 C. W. N. 241.

(e) *Administrator General, Bengal v. The L. A. Collector*, 12 C. W. N. 241 (245).

(f) *Ezra v. Secretary of State*, 32 C. 605 : 9 C. W. N. 454.

to determine and determine judicially where the person making the application was represented or not when the award was made or whether a notice has been served upon the applicant under section 12(2) and what period of limitation applies and whether the application is under the circumstances made within time. *The Collector's functions under Part III of the Act are clearly distinguishable from those under Part II of the Act, Part III of the Act relates to proceedings in Court. The Collector in rejecting the application was a court and acting judicially and his order is subject to revision by this court. To hold otherwise would be to give finality to an award under section 11 even in cases in which the Collector acts irregularly and contrary to law and then refuses on insufficient grounds to make a reference under Part III of the Act. The party aggrieved may be left without remedy which is implied by a judicial trial before the Judge, (g).* Although the L. A. Collector is not a court within the meaning of section 115 of the Civil Procedure Code or sec. 107 of the Government of India Act and consequently that section does not strictly apply to an order by the Collector refusing to make a reference to court under sec. 18 L. A. Act, still there being no other remedy outside the jurisdiction of Chartered High Courts, the High Court has power to revise such an order (h). This view was not accepted as correct in (i), where it was held that a Collector acting under sec. 18 of the L. A. Act, is not functioning as a Court but is acting in a purely ministerial or administrative capacity. An order of the Collector declining to make a reference under s. 18 is, therefore not open to revision under s. 115 C. P. C. Assuming that a L. A. Collector when acting under section 18 L. A. Act is a court, he is not a court subordinate to the High Court, consequently the High Court has no power to interfere under sec. 115 C. P. C. with an order under sec. 18 by a Collector (j). In the subsequent case (k), Henderson J. observed. "I propose to follow the old decision (12 C. W. N. 241). In that decision the learned judges made the rule absolute and I can see no escape from the conclusion that they intended to hold that this Court has jurisdiction to interfere. In my view that decision should be accepted as a correct statement of the law in this Court until it is overruled by a decision of a Full Bench." But finally in *Khetsidas Gangaram v. First L. A. Collector, Calcutta* (l), the question namely "Does the Land Acquisition Collector, Calcutta, in refusing to make a reference under sec. 18 of the L. A. Act, act as a court or a court subordinate to the High Court, as to make his order revisable under sec. 115 of the Code of Civil Procedure" was referred to a Full Bench for decision and it was held by the Full Bench "We are of opinion that in dealing with an application under sec. 18 of the Land Acquisition Act the Collector does not act as a Court, and even if he does, he does not do so as a court subordinate to the High Court."

(g) *Krishna Das Roy v. The L. A. Collector, Pabna*, 16 C. W. N. 327 : 16 C. L. J. 165.

(h) *Leah Elias Joseph Solomon v. H. D. Stork*, 38 C. W. N. 144.

(i) *Bhagban Das Shah v. First Land Acquisition Collector*, 41 C. W. N. 1301 : 1937, A. I. R. (C) 705.

(j) *Gopinath Shaw v. First L. A. Collector, Calcutta*, 42 C. W. N. 212.

(k) *Upendra Nath Roy Choudhury v. Province of Bengal*, 45 C. W. N. 795.

(l) *Khetsidas Gangaram v. First L. A. Collector, Calcutta*, 50 C. W. N. 758 (F. B.).

Madras :—The Madras High Court at first took a contrary view, (m). But in *Parameswara Iyer v. L. A. Collector, Palghat* (n), it was held following the decision in *The Administrator General of Bengal v. The L. A. Collector* (o), that the decision in *Best & Co's. case* was erroneous and the order of the Collector in refusing to make the reference is a judicial order and the High Court in its revisional jurisdiction can set aside the order if it is found illegal.

But in *Abdul Settar v. Spl. Dy. Collector*, (p), the question, "has the High Court power under section 115 C. P. C. or under section 107 of the Government of India Act to revise the order of the Collector acting under the provisions of the L. A. Act 1894 refusing to refer to the Court an application under section 18 of the same Act by a person interested, requiring him to refer the matter for the determination of the court," was referred to a Full Bench for answer. Schwabe C. J., in delivering the judgment of the full Bench, observed, "There is a considerable conflict of authority on the point and the matter has accordingly been referred to a Full Bench. It is pointed out and I think correctly pointed out that when he (Collector) acts under Part III of which section 18 forms part, he is acting in a different capacity, because he has then to divide certain things ; he has to send the case to the District Court, if certain provisions in that section have been complied with, one of which is the question of time, that is to say, he has to decide whether the application is barred or not and in doing so, in my judgment, he acts judicially. But the further question arises whether he acts as a Court. I think it is quite possible for persons to be given judicial function or functions which they have to exercise judicially without their being made courts properly, and I think a very clear instance is the case of registration authorities who have to decide whether or not they will accept the registration of certain documents and it has been held by a Full Bench of this court in *Krishnamal v. Krishna Iyanger* (q), that in respect of a refusal of registration by a registration officer no revision petition lies to this court because he is not a court at all. I doubt if the Collector sits as a court. Further the question arises, assuming that the Collector is a court, is he a court subordinate to the High Court within the meaning of section 115 of the C. P. C. ? In my judgment he is not. There is no power of appeal from his decision to any one, either to the District Court or to this Court. There is nothing in the Act to show also that he is in the true sense of the word in any way subordinate to the High Court. As far as Madras is concerned the Courts recognised are those Courts which are referred to in various statutes, such as Madras Civil Courts Act. His court, if a court at all must be a civil court. The Civil Courts are enumerated in the Civil Courts Act and the court of the Collector sitting under the L. A. Act finds no place in that enumeration. On the whole, I think, I must come to

(m) *Best and Co. v. Deputy Collector of Madras*, 23 M. L. J. 388 : 2 M. W. N. 348 : 4 L. W. 525 : 36 I. C. 621, followed *Ezra v. Secretary of State*, 32 C. 605 (P. C.).

(n) *Parameswara Aiyar v. L. A. Collector, Palghat*, 42, M. 231.

(o) *The Administrator-General, Bengal v. The L. A. Collector*, 12 C. W. N. 241.

(p) *Abdul Settar v. Special Deputy Collector, Vizagapatam*, 47 M. 357 : 46 M. L. J. 209 : (1924) M. W. N. 445 : 84, I. C. 616 : (1924), A. I. R. (M) 442.

(q) *Krishnamal v. Krishna Iyanger*, 22 M. L. J. 50.

the conclusion that even if the Collector exercising his function under section 19 although those functions are, as I have pointed out, judicial functions, is a court, he is not a court subordinate to the High Court. Therefore, no revision lies to this court."

Bombay view :—In *Balkrishna Daji Gupta v. The Collector, Bombay Suburban*, (r). "I can quite understand that if the Collector refuses to do an act which is incumbent upon him under the provisions of the L. A. Act, Part III, there should be some remedy available to the party aggrieved. But it does not follow that the refusal of the Collector to do his duty is a judicial act or even if it is a judicial act, it is a judicial act of a Court subordinate to the High Court. As far as I can see the High Court has not been given the power to interfere with the proceedings of the Collector, so that, if he refuses to do, what seems incumbent upon him under the provisions of section 18 of the L. A. Act, we cannot direct him to make a reference and the proper remedy is either for the legislature to give us power of superintendence over the Collector's proceedings under the L. A. Act, or for Government to draw the attention of their officers to the provisions of the Act and lay down rules for their guidance, if they have not already done so." But if the Collector is wrong as to his view as to the maintainability of the petition and refuses to make a reference it would always be open to the claimant to come to court and compel the Collector to make a reference if he satisfies the court that his application is within time, (s). A mandamus application under sn. 45 of the Specific Relief Act is maintainable. In *Re. Rustomji Jijibhai*, (s).

The Bombay High Court has recently held that a revision against an order rejecting an application requiring the Collector to make a reference under Sec. 18 lies to the High Court and not to the Tribunal constituted under the Nagpur Improvement Trust Act, 1936, (t).

Allahabad view :—It has been held that where a Collector acts under section 18, he is not a Court subordinate to the High Court within the meaning of sec. 115, C. P. C. and the High Court has no jurisdiction to revise his order even if he improperly fails to make a reference or having made it withdraws it before it has reached the Dist. Judge, (u).

Following the above case it has been held by the same High Court that a Collector, in making or refusing to make a reference under s. 18 acts in an administrative capacity and not judicially. Even if it were held that the Collector in this matter acts judicially, he is not a court, and certainly not a court subordinate to the High Court. It is an essential characteristic of a "Court" that it should have power to determine questions in dispute between litigants, on the merits, and the Collector has no power to determine upon the

(r) *Balkrishna Daji Gupta v. The Collector, Bombay Suburban*, 47 B. 699 : 25 Bom. L. R. 398 : 73 I. C. 354 : (1924), A. I. R. (B) 290,

(s) *G. J. Desai v. Abdul Majid Kadri*, A. I. R. 1951 Bom. 156 : I. L. R. 1952, Bom. 580. *Re. Rustomji Jijibhai*, I. L. R. 30 Bom. 341.

(t) *Jankibai Tukaram v. Nagpur Improvement Trust*, A. I. R. 1960 Bom. 499 : 62 Bom. L. R. 629 : 1960 Nag L. J. 276.

(u) *In Kashi Prasad v. Notified Area of Mahoba*, 54 All. 282 : 148 I. C. 111 : 1932 A. I. R. (All) 598.

merits, the questions raised by the application submitted to him under s. 18 ; he is merely required to refer the questions for determination to the court of the Dist. Judge. The High Court has no appellate jurisdiction over the Collector acting under the L. A. Act ; and by s. 55 of the Act power is given to the Local Govt. and not to the High Court, to make rules for the guidance of officers in all matters connected with the enforcement of the act, including, therefore the guidance of the Collector when dealing with an application under s. 18. So, even if the Collector be regarded as a court in any sense of the word, it cannot be deemed that the court is subordinate to the High Court. No revision, therefore, lies to the High Court under sec. 115 of C. P. C. against an order passed by a Collector under s. 18 of L. A. Act, refusing to make a reference to the court of the D. J. (v).

Punjab view :—In the Punjab, it was at first held that a Collector who takes action under section 18 of the L. A. Act is not in any sense a civil court, and the Chief Court has no jurisdiction to interfere with the order rejecting an application praying that the matter of the award be referred for the determination of the Court, (w). But it has subsequently been held that a Collector in making a reference, or refusing to make a reference acts judicially and therefore his proceedings are subject to revision by the High Court, (x). But again in *Mustaq Ali v. Secy. of State* (y), it has been decided that a revision over an order by a Collector dismissing an application made by a person under the L. A. Act, sec. 18, to refer the matter of his right to receive the compensation instead of another does not lie as the High Court is not competent to revise the order of the Collector. Again in *Amar Nath v. Governor-General* (z), it has been held that a Collector under s. 18 cannot be treated as a court and *a fortiori* he is not subordinate to the High Court so as to be controlled under s. 115 C. P. Code.

The Collector's order refusing to make a reference has now been made subject to revision by sub-section (3) added to sec. 18 by Land Acquisition (Punjab Amendment) Act, 1953, (Act II of 1954), (a).

Patna view :—The Patna High Court at first in *Swaraswati Pattack v. The L. A. Deputy Collector of Champaran*, (b), fully endorsed the view of the Calcutta High Court as held in the *Adm. G. Bengal v. The L. A. Collector*, and held that the High Court has jurisdiction to set aside an order of the Collector refusing to make the reference. But in *Jagannath Lall v. L. A. Dy. Collector* (c) a view similar to that of the Calcutta High Court Full

(v) *D. J. Bhajani Lal v. Secretary of State*, 54 All. 1085 : 1932 A. L. J. 769 : 1932

A. I. R. (All.) 568. *Secy. of State v. Bhagwan Prasad*, A. I. R. 1929 All. 769.

(w) *Rafe-ud-Din v. Secretary of State*, 65 P. R. 1915 : 144 P. W. R. 1915 : 31 I. C. 76.

(x) *Secretary of State v. Jiwan Baksh*. 67. P. R. 1916 : 36 I. C. 213.

(y) *Mushtaq Ali v. Secretary of State*, 31 Punj. L. R. 158 : 127 I. C. 711 : 1930 A. I. R. (L) 242.

(z) *Amarnath v. Governor-General*, 193 I. C. 477 : 1940 A. I. R. (L) 299.

(a) *Kako Bai v. L. A. Collector*, A. I. R. 1956 Punj. 231 : I. L. R. (1957) Punj. 74 : 58 Punj. L. R. 397.

(b) *Saraswati Pattack v. The Land Acquisition Deputy Collector of Champaran*, 2 Pat. L. J. 204. *Administrator General, Bengal v. The L. A. Collector*, 12 C. W. N. 241.

(c) *Jagannath Lall v. L. A. Deputy Collector, Patna*, A. I. R. (1940) Pat. 102a.

Bench in 50 C. W. N. 758 was expressed by a Full Bench of the Patna High Court.

Oudh view :—It was held that a Collector in rejecting an application made under section 18(1) of the L. A. Act, acts judicially and his order is open to revision by the High Court, (d). Consistently with this view it has been held in *Ahmed Ali Khan v. Secretary of State* that an order of L. A. officer (e), in which he refuses to make a reference under sec. 18 is a judicial order and as such is subject to revision by the High Court. Though the proceedings culminating in an award under Part II of the Act are administrative and not judicial, if an ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court and these proceedings would be judicial.

Burma view :—The Chief Court of Burma in *Robert Leslie v. Collector of Mergui* (f), held that the proceedings under Part III of the L. A. Act are judicial character. The Collector may be considered acting as "Court". An order passed by a Collector dismissing an application under section 18 for a reference to the Court regarding his award of compensation for certain lands is a judicial order and is subject to revision by the High Court. But in *Burjorjee v. Special Collector of Rangoon* (g), it was held that where Land Acquisition Officer refuses to make a reference to Court under section 18 of the L. A. Act, the person aggrieved by such refusal may make an application under section 45 of the Specific Relief Act to the High Court for an order directing the Land Acquisition Officer to make the reference. Again it has been held that "in making an award under s. 11 of the L. A. Act the Collector is acting as a revenue officer and in an administrative and not in a judicial capacity, (h). The Collector therefore, is not acting as a court when he makes or refuses to make a reference under section 18 of the Act, and the High Court has no jurisdiction to revise his order under s. 115 of the Civil Procedure Code."

Nagpur view :—The High Court of Nagpur has also held that a Collector exercising power under s. 18 Land Acquisition Act, is not a court subordinate to High Court, (i). The High Court therefore has no power to interfere in revision with Collector's order refusing to make reference under s. 18 either under s. 115 C. P. Code, or s. 107, Government of India Act.

In view of the conflict of judicial opinion as set forth above, it behoves the Legislature to intervene to safeguard the interest of the claimants against the arbitrary or wrongful dismissal of the petition of reference by the Collector. As the matter stands a claimant has no remedy against the Collector refusing to refer except by a suit properly framed, (j). Henderson,

(d) *Hari Das Pal v. Municipal Board Lucknow*, 16 O. C. 375 : 22 I. C. 652.

(e) *Ahmed Ali Khan v. Secretary of State*, 9 O. W. N. 234 : 137 I. C. 64 : 1938, A. I. R. (O) 180.

(f) *R. Leslie v. Collector of Mergui*, (1905) I. L. R. 132.

(g) *Burjorjee v. Special Collector, Rangoon*, 4 Bur. L. J. 26 ; 96 I. C. 110 : 1926 A. I. R. (Rang.) 135.

(h) *M. H. Mayat v. Land Acquisition Collector, Myinguan*, 12 Rang. 275.

(i) *S. G. Sapre v. Collector, Saugor*, 168 I. C. 712 : 137 A. I. R. (N) 12.

(j) *Rammeswar Singh v. Secretary of State*, 35 C. 470 ; 5 C. L. J. 669 ; 11 C. W. N. 365.

J., delivering the judgment in the case of *Upendra Nath Rai Choudhury v. Province of Bengal* (k), observed, "I can not part with this case without emphasizing the desirability of speedy legislation. I do not suppose that anybody would contend that it is a proper thing that a party who may have a claim involving thousands of rupees, should be debarred from contesting it in a Court because of an improper order by the Collector. It appears to me that the only satisfactory solution is for the Legislature to provide a remedy in clear and unambiguous language. It has, I know, been suggested that the difficulty might be got over by rules framed by the Local Government under sec. 55 of the Act. I am extremely sceptical whether such a remedy would be effective. I very much doubt whether by a rule the Local Government can create an Appellate Tribunal able to compel the Land Acquisition Collector to make a reference. Anything less than this would be useless. Ex-hypothesi, there is an officer who, either deliberately for reasons best known to himself, or through misappreciation of the facts and law relating thereto, has discharged the provisions of the statute itself. It is hardly likely that such an officer would obey a mere rule made by the Local Government."

Orissa view :—In *Samant Radha Prasanna Das v. Prov. of Orissa* (l), an objection to award of compensation was filed in time but the Collector overruled the objection on ground that the objection was filed out of time and refused to make a reference under Sec. 18. It was held that the Collector while acting under Land Acquisition Act is not a court subordinate to the High Court and his order is not open to revision under sec. 115 C. P. C. and that the Collector being a tribunal a petition under Art. 226 or 227 of the Constitution is maintainable, the Collector's order being manifestly opposed to law resulting in great injustice.

Relief under the Constitution of India, if any :—In *Bimala Prosad Roy v. State of West Bengal* (m), the question arose whether Art. 227 of the Constitution which gives the High Court a right in appropriate cases to interfere judicially with orders of Courts and tribunals made amenable to the jurisdiction by that Article, applies to the case of a refusal by the L. A. Collector to refer to the Court under section 18 of the L. A. Act. It was held that the Constitution of India came into force on January 26, 1950 and has no retrospective effect in reference to orders made before that date. The case referred to above does not lay down that the Article will apply to the L. A. Collector's refusal to refer to the Civil Court under section 18 subsequent to the date of the Constitution of India coming into force. Writ petitions under Art. 226 of the Constitution is maintainable on several grounds. See Notes under sec. 18 & 19.

What should the reference contain :—In making the reference the Collector shall state for the information of the Court in writing (a) the situation and extent of the land with particulars of trees, buildings, standing crops etc.,

(k) *Upendra Nath Rai Choudhury v. Province of Bengal*, 45 C. W. N. 792.

(l) *Samant Radha Prasanna Das v. Province of Orissa*, A. I. R. 1952 Orissa 98 ; 6 W. L. R. Cuttack 9.

(m) *Bimala Prosad Roy v. State of West Bengal*, 55 C. W. N. 87.

thereon, (b) the names of the persons whom he has reason to think interested in such land, (c) the amounts awarded for damages under sections 5 and 17 or either of them and the amount of compensation awarded under section 11, (d) if the objections be to the amount of compensation, the grounds on which on the amount of compensation was determined. To the said statements shall be attached a schedule giving the particulars of the notices served upon and of the statements in writing made or delivered by the parties interested. These statements are necessary for the proper determination by the court of the market value of the lands as defined in section 3(4) of the Act and also for the apportionment of the compensation money amongst the persons interested. In making a reference the only information that the Collector is required to supply is that contained in sub-sec. (2) of sec. 19 and he is not required, where an objection concerns the question of persons to whom the compensation is payable, to submit to the court a question of ownership in terms. When an objection as to title is taken but the Collector's letter in making the reference does not refer to any question other than that of compensation, it cannot be said that the question of title is not before the court. It is a duty of the Collector before he makes a reference under section 18 of the L. A. Act to decide on the materials before him whether he should make the reference or not, and if he decides to make and does make a reference, it is not open to the Land Acquisition Court to go behind it. It is not open to the High Court or any other authority to interfere when the Land Acquisition Officer refuses to make a reference, his decision must be equally final when he decides to make and does make a reference. Where the Collector as the Land Acquisition Officer mentioned in a letter to the Subordinate Judge that he had doubts whether the reference should be made but the order of reference was worded as if it was a judicial order and gave the reason for reference and names of persons interested and the amount as required by the Act. *Held*, (1) that in the absence in the order of reference of mention as regards the propriety of making the reference, the validity of the reference could not be questioned, (2), It is not obligatory on the part of the Collector to give notice to interested persons whom he is not aware of. If he chooses to give notice, then that person will have to apply within six weeks for a reference being made. But if no notice is given then the period of limitation within which to apply will be six months, (n). But the Court can enquire whether Collector has jurisdiction to refer after apportionment, and the Supreme Court held, it has (o).

Result of Collector's failure to send statements :—Clause (d) of sec. 19 is a "most salutary provision of the law of L. A., because, by requiring the Collector to state in the reference to the Court the grounds on which the amount of compensation was determined, it operates as a safeguard against any arbitrary award being made." (p) The failure of the Collector in making a reference under section 18 of the L. A. Act to state the grounds on which

(n) *Venkateswaraswamivar v. Sub-Collector, Bejwada*. 56 L. W. 85 : 1943, M. W. N. 49 : (1943) I. M. L. J. 66 : 210 I. C. 317 : A. I. R. (1943) Mad. 327.

(o) *Dr. G. H. Grant v. State of Bihar*, 1965 (II) S. C. A. 801.

(p) *Madhusudan Das v. The Collector of Cuttack*, 6 C. W. N. 406.

the amount of compensation was determined as required by section 19(d) makes it incumbent upon the Collector to justify the award before the Special Judge, (g). The burden of proof is ordinarily on the claimant in the Court of the Special Judge to prove that the valuation made by the Collector is insufficient. But burden must vary according to the nature of the enquiry made by the Collector. If no evidence has been taken by the Collector and if no reasons have been given in his decision to support his conclusion, the claimant has a very light burden to discharge. The *ipse dixit* of a Collector has very little weight and is not *prima facie* evidence of the correctness of his award (r). Where a L. A. Collector merely forwards to the judge a statement of claim 'referred under s. 18 with an expression of opinion that the claimant is not interested in enquiry, he cannot be said to refer the case within the meaning of s. 19 of the Act, (s).

Service of Notice

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely :—

- (a) the applicant ;
- (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded ; and
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

State Amendments

1. **Jubbulpore (City).**—*C. P. and Berar Act III of 1950, S. 293 and Sch. para 8—City of Jubbulpore Corporation Act, 1948.*

After the words "amount of compensation" in clause (c) of section 20 the words "or costs" shall be deemed to be inserted. [See under Part III, Chapter VIII, M. P. (10)].

2. **Nagpur (City).**—Same as that of Jubbulpore (City).

3. **Madhya Pradesh.**—*C. P. Act II of 1922, S. 239 and Schedule, para. 6.*—Same as that of Jubbulpore (City).

4. **Maharashtra.**—Same as that of Madhya Pradesh.

5. **Mysore.**—*The Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961.*

[See under Part III, Chapter X, Mysore].

(g) *Harish Chandra Neogy v. Secretary of State*, 11 C. W. N. 875.

(r) *Fink v. Secretary of State*, 34 C. 599.

(s) *Marwari Padamji v. Deputy Collector, Adoni*, 27 M. L. J. 106 ; 24 I. C. 141.

Best & Company v. Deputy Collector, Madras, 20 M. L. T. 388 ; 2 M. W. N. 348 ; 4 L. W. 535 ; 26 I. C. 621.

6. **Punjab.**—Same as Jubbulpore (City).

7. **Uttar Pradesh.**—*U. P. Act II of 1959, S. 376 and Sch. II, para 9.*
Similar to Jubbulpore (City).

Notes

Legislative history :—This was Sec. 19 of the Old Act X of 1870 which ran as follows :—

“The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under sec. 9) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

The Court shall also cause a notice to be served on the Collector, and each of such persons requiring them to appoint, on or before a day to be therein mentioned, two qualified assessors (one to be nominated by the Collector and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of compensation.

If no claimant has attended pursuant to the notice mentioned in section 9, the Court shall cause to be affixed on some conspicuous place on or near the land needed a notice to the effect that if the persons interested in such land do not, on or before a day to be therein mentioned, appear in court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation and nominate a qualified assessor, the Court will proceed to determine such amount.”

Courts under Act X of 1870 and Act I of 1894 :—The change that has been made in the constitution of the “court” by the present Act is very well explained by the Select Committee. “By sections 10 and 11 of the Bill (passed into Act I of 1894) parts III and IV of the present Act (X of 1870) are repealed and a new procedure substituted for that which now obtained in the decision of objection to the Collector’s award. Under the Act (X of 1870) if any one of the persons interested does not attend the proceedings before the Collector, or if the Collector is unable to agree with the persons interested as to the amount of compensation or if upon his enquiry questions arise respecting title to the land or interest therein, the Collector is bound to refer the matter to Court, which then proceeds to determine it with the help of assessors appointed by the Collector and the persons interested respectively. It was pointed out in the Statement of Objects and Reasons that these provisions entailed in a great number of cases unnecessary trouble, delay and expense to the owners of land acquired under the Act ; for experience has shown that failure in attendance before the Collector is more frequently due to mere indifference than to any actual dissatisfaction with the award. In the acquisition of land for a railway, for example, it constantly happens that he finds it not worth his while to attend before the Collector. His absence, however, under the rigorous conditions of the Act, necessitates a reference of the case by the Collector with all the attendant trouble and expense, not merely to the proprietor who was absent but to many others who may be associated with him in the matter and who may be themselves perfectly satisfied with the award.”

"The Bill accordingly proposed to make the Collector's award final with the proviso that any person dissatisfied could sue the Collector in civil court. The Committee are advised that in order to attain the end in view, so radical a change in procedure for the adjustment of the compensation is unnecessary. They think with more than one of the Governments consulted that it will be sufficient to provide that the Collector's reference to the civil court shall only be made when a person, dissatisfied with the award, ask that it be referred, the award being otherwise final. This change in the present law is reasonable and the Committee are of opinion that it sufficiently corrects the main practical defect in the Act. They cannot leave out of sight, that the valuation upon which a Collector proceeds is ordinarily made by native subordinates whose official interests lead them to make the valuation on the lowest possible scale, and that in many cases the owners of land acquired under the Act are poor peasants :o have neither the means nor the courage to undertake a formal suit against the Collector of their district, and who would accept very inadequate compensation rather than do so."

"As to the discontinuance of the system of Assessors all authorities are agreed. It is universal remark that competent Assessors are not easily procurable, and that there is an irresistible tendency for the Assessors to become not an adviser but a partisan, adding very largely to the cost of the trial without assisting the Judge. In the words of Mr. Justice Parker, the nominees are faithful to their trust and deliver their opinion with minds altogether unaffected by the evidence."

"The Committee have accordingly substituted for sections 10 and 11 of the Bill a revision of Parts III and IV of the Act effected in accordance with the views which have thus been expressed. The Collector's award will be referred to the Court whenever any person interested asks that it be referred, but only then. The Judge will give his decision on it, and in all cases there will be a right of appeal from the judge's award to the High Court." (Preliminary Report of the Select Committee dated 2nd February, 1893).

Notice to persons interested :—The apportionment of the compensation is quite distinct from that of settling the compensation under the provisions of the Act and any dispute as to the apportionment is only decided as between the persons who are actually before the Court. A separate notice therefore, of the apportionment proceedings is required to bind any person by these proceedings and where such a notice has not been served, any party interested, although served with notice of the proceedings for settling the amount of compensation, cannot be considered a party to the proceedings for apportioning it, and is not barred by the decision in the latter proceedings from bringing a suit under the proviso to section 40 of the Act X of 1870 (now section 31) to recover a share of the money so apportioned (a). To a reference to the civil court by the Collector under the provisions of Sec. 18 of the L. A. Act, the local authority at whose instance and at whose cost the acquisition of land is made is not a necessary party and is not entitled to a

separate notice of the reference, (b). It is nowhere laid down that a proceeding under part 3 of the L. A. Act is a suit in which the objector is the plaintiff although it is analogous to such a suit. Although the proceeding in Court is initiated by the reference from the Collector, the reference itself follows automatically upon the application of the objector made under s. 18, provided that the objection is made within time. The Collector's only function is to adjudicate in regard to limitation and he is not empowered to amalgamate the various objections preferred by different objectors, though he is required under s. 19 to give the names of all persons whom he believes to be interested, and the Court is bound to issue notice to those persons under s. 20, unless they have consented to receive the compensation awarded by the Collector without protest. If they have so consented, no notice will be issued to them, and they will not benefit from any modification of the Collector's award which is ultimately introduced into the award of the Court (c).

When three references have been made, all of which arise between the same parties and which are in respect of the same subject matter and which arise out of one and the same land acquisition case, they can all be heard together, (d).

The term "interested" in section 20(b) L. A. Act is wide enough to include both, the persons interested in supporting or opposing the applicant for reference, that means clause (b) must have reference to parties having conflicting claims to the compensation either whole or in part as against the application or otherwise (e).

When a tenant not entitled to compensation :—When the Collector makes a joint award in favour of landlord and his tenant but the landlord alone files an application for reference disputing the amount of compensation and also claiming entire amount for himself to the exclusion of the tenant and the Improvement Tribunal enhances valuation, it was held that the tenant was not entitled to any part of the enhancement since he had not questioned the Collector's valuation (e-1). In all valuation cases Government is a necessary party, (f).

Notice to the Collector when necessary :—Notice to Collector is necessary only in case where the objection is in regard to the area of the land or to the amount of compensation; (g). Under section 20(c) of the L. A. Act, the Secretary of State is only interested in the amount of compensation which the Collector, or the Court in reference by the Collector, awards. He is not interested as a party in the distribution or apportionment of the compensa-

(b) *Mandalay Municipal Committee v. Maung*.—It, 7 Rangoon 20 : 117 I. C. 247 : 1929 A. I. R. (R) 115.

(c) *Lakshmidas Bhagwandas v. Secretary State*, 157 I. C. 382 : 1935 A. I. R. (Pesh.) 92.

(d) *Lila Mahton v. Sree Govind Singh*, A. I. R. 1956 Pat. 103 (D. B.).

(e) *Nagendra Nath Sahi v. Bhagwati Prasad Narayan Singh*, 223 I. C. 553 : A. I. R. (1946) Pat. 447.

(e-1) *State of West Bengal v. Klsson Chand*, A. I. R. 1960 Cal. 506.

(f) *Naresh Chandra Bose v. State of West Bengal*, A. I. R. 1955 Cal. 398.

(g) *K. N. K. R. M. K. Chettyar Firm v. Secretary of State*, 11 Rang. 344 : 1933 A. I. R. (Rang.) 176.

tion. His interest ceases when he has pleaded at the disposal of the Court the amount of compensation. Any dispute as to the distribution or apportionment of the amount must be fought out between the parties who claim a share in the compensation, (h). Where a reference is made at the instance of the owner of a dominant tenement on the ground that the Collector's award in their favour was too low, the Collector ought to be given notice under section 20 in addition to the owner of the servient tenement and the case should be tried not as an apportionment case but as a valuation case, (i).

Procedure in court :—The proceedings of the Court in a reference under section 18 are not a mere continuation of the Collector's proceedings. They are judicial proceedings and decision must be based on evidence before the court on admission made by the parties.

Evidence before the Collector cannot be considered as evidence before the Court except with the consent of parties, (j). In proceedings for the payment of compensation in regard to acquisition of lands under the L. A. Act the proceedings before the court are of the nature of objections to the Collector's award and not a judicial enquiry independently undertaken into such question as the claimant may raise, (k). The reference to Court of the objections to the Collector's award, is not a suit, (l), nor by way of appeal against the Collector's award. It is for a judicial investigation and trial by a Court of competent jurisdiction as to measurement, area, market value of the land acquired and also who are the persons interested in the apportionment of the compensation money (m).

As has been observed in *E. Taylor v. Collector of Purnea* (n), the L. A. Act provides for two classes of reference to judge, one to assess compensation and the other to apportion the compensation. From the earliest time down-wards it has been the invariable practice to treat apportionment of the compensation as distinct from that of settling the amount of compensation under the provisions of the Act, and any dispute as to the apportionment is only decided as between those persons who are actually before the Court, (o). The value of land acquired under the L. A. Act should ordinarily be determined as a whole and the question of apportionment of compensation awarded amongst claimants of different degrees should thereafter be taken

(h) *Sahwal Das v. Secretary of State*, 20 A. L. J. 604 : 77, I. C. 112 : (1922) A. I. R. (A) 438.

(i) *Bishnu Prasad Chunder v. Benoy Krishna*, I. L. R. (1945) I, Cal. 589 : 49 C. W. N. 203 : 79 C. L. J. 105 : A. I. R. (1945) Cal. 142 : 221, I. C. 373. *Ranga Reddy v. Collector of Hyderabad*, A. I. R. 1956 (Hyd.) 202 (D. B.).

(j) *C. R. M. Firm v. Special Collector of Pegu*, 8 Rang. 364 : 127 I. C. 733 : 1930 A. I. R. (Rang.) 346.

(k) *Secy. of State v. C. R. Subramania Ayyar*, 59 M. L. J. 30 : 127 I. C. 298 : 1930, A. I. R. (Mad.) 576.

(l) *Mahadevi v. Neelamani*, 20 M. 269.

(m) *Sri Raja Bommadevara Venkata Nara Naidu v. Atmuni Subrayadu*, 25 M. L. J. 179 : 121 C. 406. 10 M. L. J. 349.

(n) *E. Taylor v. Collector of Purnea*, 14 C. 423.

(o) *Hurmutjan Bibi v. Padma Lochan Das*, 12 C. 33,

into consideration, (p). "The L. A. Act contemplates two perfectly separate and distinct forms of procedure", observed Their Lordships of the Judicial Committee in *Ramachandra Rao v. Ramachandra Rao* (q), "one for fixing the amount of compensation described as being an award (an appeal from that award or of any part of award is given to the High Court under section 54 of the Act) ; and the other for determining, in case of dispute, the relative rights of persons entitled to the compensation money. When once the award as to the amount has become final all questions as to fixing of compensation are then at an end ; the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their rights and title to the property may be."

Parties in a Reference :—The party at whose instance the reference was obtained occupies the position of the plaintiff and his opponents that of the defendants, (r). A company or a corporation for whose benefit land may be acquired is not a necessary party in a land acquisition proceeding. Section 50 of the L. A. Act allows such company or corporation to appear simply for the purpose of watching the proceeding or assisting the Secretary of State. Such a company or corporation has no power to ask for a reference under section 18 of the Act, nor has the right to appeal against the decree made upon a reference (s).

To a reference to the Civil Court by the Collector under the provisions of sec. 18 of the L. A. Act, the local authority at whose instance and at whose cost the acquisition of Land is made is not entitled to a separate notice of the reference, (t). The real party to a proceeding in land acquisition case is not the Collector but the Government, (u). In a litigation to which the Crown is a proper party, it is the Secretary of State for India who alone can represent it, (v). Under the provisions of the L. A. Act when reference is made to the Court by the Collector under sec. 18, the Collector is to be a party to the proceedings if the objection is in connection with the area of the land or the amount of the compensation awarded. But if the objection is with respect to the person or persons to whom the compensation is payable the collector is not an interested party and ought not to be served with a notice under sec. 20(b), (w). The Government is not a necessary or proper party to the apportionment proceeding, (x). The person interested can

(p) *Sadhu Charan Roy Chowdhury v. Secretary of State*, 36 C. L. J. 63.

(q) *Ramachandra Rao v. Ramachandra Rao*, 45 M. 320 : 35 C. L. J. 545 : 26 C.W.N. 713.

(r) *Behary Lal Sur v. Nand Lal Gossain*, 11 C. W. N. 430.

(s) *The Municipal Corporation of Pabna v. Jogendra Narain Rakshit*, 13, C. W. N. 116 : 41 C. 332 and In the matter of an application of the *Chairman, Howrah Municipality*, 9 C. W. N. LXVI.

(t) *Mandalay Municipal Committee v. Mawig It.* 7 Rang. 20 : 117 I. C. 247 : 1929, A. I. R. (R) 115.

(u) *Collector of Akola v. Anand Rao*, 7 N. L. R. 88 : 11 I. C. 690.

(v) *Government of Bombay v. Esufally Salebhoy*, 34 Bom. 618 : 12 Bom. L. R. 34.

(w) *K. N. K. R. M. K. Chettyar Firm v. Secy. of State*, 11 Rang. 344 : 1933 A. I. R. (Rang.) 176.

(x) *Naresh Chandra Bose v. State of W. B.*, 1955, A. I. R. 398.

apply to be joined as a party to the reference though his name does not appear in the reference made, the only condition being that the question raised by him is in essence, the referred dispute, (y).

The parties in a Land Acquisition proceeding after partition of Bengal :

—In certain Land Acquisition proceedings in a mauza in the district of Burdwan started before the “appointed day” the Province of West Bengal, after the said day, objected before the District Judge that the liability to pay the compensation to be determined for the land acquired, was now that of the Province of East Bengal, in view of sec. 9 of Indian Independence (Rights, Properties and Liabilities) Order, 1947, and further that the Province of West Bengal could not be substituted in the proceedings in place of the now non-existent Province of Bengal and could not be made liable, it was held that the Province of West Bengal now represented by the State of West Bengal was liable and was to be substituted in the proceedings in place of the previous Province of Bengal, in as much as the lands fall within the Province of West Bengal. Art. 12 of the Indian Independence (Rights, Properties and Liabilities) Order, 1947 applied to the present case since the present proceeding involved the question of compensation for acquisition of land which was a question with respect to the value of the land and was, therefore, “a legal proceeding with respect to property” within the meaning of Art. 12. By the Constitution of India the State of West Bengal is the successor to the Province of West Bengal. In view of Sec. 6 of the Indian General Clauses Act, accrued rights, liabilities and proceedings in that connection are not affected by the repeal of the Indian Independence Act 1947 (z).

Death of a party and procedure :—A reference under s. 18 is not a suit. So O. 22 C. P. C. is not applicable. If a party in the proceeding is dead, his legal representatives may of their own accord come and ask to be joined, but if they do not do so, the proceedings cannot abate, because lands have been acquired and compensation shall have to be decided and paid to proper persons now or in future. So it is the duty of the Government to supply to the Court the names and addresses of the legal representatives of the deceased to enable the court to issue fresh notices under s. 20, (a). 3 years period of limitation under Art. 137 (old 181) of the Limitation Act 1963 is applicable.

Restriction on Scope of Proceedings

21. The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

Notes

The section is new. There was no section in the old Act X of 1870 corresponding to sec. 21 of Act 1 of 1894.

(y) *Special L. A. Officer v. Umed Laloo*, I. L. R. 1942 Kar 157 : 201 I. C. 639 : A. I. R. 1942 Sind. 82.

(z) *Sri Sri Iswar Madan Gopal Jiu v. Province of West Bengal*, 54 C. W. N. 807.

(a) *Abdul Karim v. State of Madh. Pra.*, A. I. R. 1964 M. P. 171.

Source and origin of Civil Court's jurisdiction :—It is clear that it is the reference under section 18 that gives the Court jurisdiction over the matters referred. The L. A. Court has jurisdiction only over those matters which have been referred by the Collector under section 18 and on no other matters. The Court is powerless, if there is no reference by the Collector or if the Collector refuses to refer or the reference is bad in law. The conditions laid down in section 18 must be strictly fulfilled for a valid reference to Court before the Court can have jurisdiction to entertain the reference. The jurisdiction of the Court under the Act is a special one and is strictly limited, by the terms of sections 20 and 21. It only arises when a specific objection has been taken to the Collector's award and it is confined to a consideration of that objection. Once, therefore, it is ascertained that the only objection taken is as to the title to receive the compensation, that alone is the matter referred and the Court has no power to consider anything beyond it, (b).

As has been pointed out by the Judicial Committee of the Privy Council in (c), "whenever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament) and such jurisdiction is only given on certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with in order to create and raise the jurisdiction, for if they be not complied with jurisdiction does not arise", *In the matter of Nanu Kothare* (d). In the absence of a reference by the Collector at the instance of the aggrieved party the Court has no power to enhance the amount of compensation awarded to such party, (e). An order of the L. A. Officer directing a claimant to approach the civil court within a fixed period to get the compensation money or share in it does not amount to a reference to the District Judge and hence the District Judge has no jurisdiction to entertain an application for compensation by the claimant (f). The Collector has power to make reference under section 18 of the L. A. Act on certain specified conditions. The court is bound to satisfy itself that the reference made to it by the Collector complies with the specified conditions, so as to give the court jurisdiction to hear the reference. If the reference does not comply with the terms of the Act the court can not entertain it, (g).

Enquiry into Collector's jurisdiction and s. 30 :—On a question whether reference can be made under s. 12 even after apportionment of the compensation was made, the Supreme Court has held by majority, (Shah J.) dissenting, that the Collector has Jurisdiction to make a reference to Court under section 30 of the Act even after he has made apportionment (h).

(b) *Lila Mahton v. Sheo Govind Singh*, A. I. R. 1956 Pat. 103 (D. B.).

(c) *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan*, 6 M. I. A. 134.

(d) *Nanu Kothare*, 30 Bom. 375.

(e) *Narayana v. Annapurnamma*, I. L. R. 1941, Mad. 753.

(f) *Sikandar Shah v. Chan Bibi*, 202 I. C. 155 ; A. I. R. (1942) Pesh. 60.

(g) *Mahadeo Krishna v. Mamlatdar of Alibag*, I. L. R. (1944), Bom. 90 ; 46 Bom. L. R. 375 ; 215 I. C. 101 ; A. I. R. 1944, Bom. 200.

(h) *Dr. G. H. Grant v. State of Bihar*, 1965 (II) S. C. A. 801. *Boregawada v. Subramaniah*, A. I. R. 1959, Mysore 265 disapproved. *Promotho v. Rakhal*, 11 C. L. J. 420, referred to.

Exclusive jurisdiction of the L. A. Court :—When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and cannot concurrently be exercised by the ordinary court, (i).

Some lands were acquired for a Railway and the Collector after serving notice under L. A. Act upon the Zamindar and patnidar, apportioned the compensation money half and half between them. Neither party applied for a reference under the L. A. Act and the putnidar withdrew the amount awarded to him. The zemindar thereupon brought a suit for recovery of the amount withdrawn by the putnidar on the ground that under the putni kabuliyat the putnidar was not entitled to any compensation money. It was held that the zemindar having been served with notice under section 9 of the Act was bound to apply for a reference under section 18 when he was dissatisfied with the award, and he cannot maintain a suit in the ordinary court to reopen the question. The Act creates a special jurisdiction and provides a special remedy. And ordinarily when jurisdiction has been conferred upon a special court for the investigation of matters which may possibly be in controversy, such jurisdiction of the civil court is ousted, (j).

Whenever a question of title arises between rival claimants, it must under the terms of the L. A. Act be decided in the case and cannot be made the subject of a separate suit, (k).

The remedy of a person dissatisfied with an order made by the L. A. Collector under section 11 of the L. A. Act is by a reference under section 18 of the said Act and not by a suit in the ordinary civil court for damages against the Secretary of State, (l). No civil court has any jurisdiction to go into any question decided by the L. A. Court. In a claim disposed of by the Collector in the course of L. A. proceedings prescribed by Act I of 1894 the Collector's order of adjudication of the rights of the owners or claimants to the property for which compensation has been assessed cannot be questioned otherwise than by reference to court under the provisions of the Act, and the civil courts are not competent to re-open and determine matters disposed of in accordance with the Act in a separate suit, (m). The Court can make an award for the entire sum representing all the interests of the four brothers, particularly when a fresh petition by the other referring claimants would be barred by time. The claim was joint and not several and the award was therefore in order, (n).

(i) *Maharaja Sir Rameswar Singh v. The Secretary of State*, 11 C. W. N. 356 : 34 Cal. 470 : 5 C. L. J. 669.

(j) *Bhandi Singh v. Ramadhin Roy*, 10 C. W. N. 991 : 2 C. L. J. 20n ; *Stevens v. Jeacocke*, (1848) 11 Q. B. 731 ; *West v. Downman*, (1880), 4 Ch. D. 111 ; *Ramachandra v. Secretary of State*, 12 Mad. 825 ; *Saibesh Chandra Sarkar v. Sir Bejoy Chand Mahatab*, 26 C. W. N. 506 : 65 I. C. 711.

(k) *Babujan v. Secretary of State*, 4 C. L. J. 256.

(l) *Jogesh Chandra Roy v. Secretary of State*, 29 C. L. J. 53.

(m) *Amolok Shah v. Charan Das*, 16 P. W. R. 1913 : 17 I. C. 684.

(n) *Province of Bengal v. Radha Gobinda Thakur*, 55 C. W. N. 110.

A person who, having been made a party to a reference under the L. A. Act had the opportunity and duty of litigating his claim before the Special L. A. Judge, but did not there press his claim to any part of the compensation, is not entitled to come again to the civil court and re-open the question, (o). All questions of title arising between the rival claimants in a land acquisition proceeding should be decided by the L. A. Judge in the L. A. case and should not be left to be decided by a separate suit. The court was bound to decide all points, the decision of which was necessary to pass order as to the disposal of the money including questions arising as to who was the proper heir of the claimant, (p). Their Lordships of the Judicial Committee observed, "there has in the present case been a clear decision upon the very point now in dispute, which cannot be re-opened. The High Court appears to have regarded the matter as concluded to the extent of the compensation money, but that is not the true view of what occurred, for as pointed out in (q), it is not competent for the court in the case of the same question, arising between the parties to review a previous decision, no longer open to appeal, given by another court, having jurisdiction to try the second case."

Scope of enquiry on reference is limited :—The scope of reference made at the instance of a claimant under section 18 of the L. A. Act is of a limited character. The question of the legality of the acquisition does not form the subject of enquiry by the L. A. Judge, (r). The L. A. Court gets jurisdiction only on a reference being made to it by the Collector, and its jurisdiction is confined to disposing of the matter so referred. It has no jurisdiction under the Act to consider the legality of the acquisition or of the reference, (s). The jurisdiction of the court under sections 18-28 of the L. A. Act is a jurisdiction to enquire, into the objection to the Collector's award and to make an award itself after hearing the relevant evidence.

The Act does not empower the court to remand the case to the collector for fresh enquiry and for a further award, (t). The question which may be determined by the Court upon a reference relate to valuation and to other matters of a like nature, (u). The court of the L. A. Judge is a court of special jurisdiction the powers and duties of which are defined by statute and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the legislature to be comprehended within the scope of the enquiry before it. It was never contemplated by the statute to authorize the L. A. Judge to review the award of the Collector or

(o) *Ranjit Singh v. Sajjad Ahmad Choudhury*, 32 I. C. 922 ; *Secretary of State v. Quamar Ali*, 16 A. L. J. 699 ; 51 I. C. 501 ; *Kasturi Pillai v. Municipal, Council, Erode*, 37 M. L. J. 618 : 26 M. L. T. 268 ; 10 L. W. 336 : 53 I. C. 646.

(p) *Nihal Kuar v. Secretary of State*, 13 I. C. 550. *Ramchandra Rao v. Ramchandra Rao*, 45 Mad. 320 : 26 C. W. N. 713 : 35 C. L. J. 545 (P. C.) : 24 Bom. L. R. 936.

(q) *Badar Bee v. Habib Merican*, L. R. 1909 App. Cas. 615.

(r) *Raghunath Das v. Collector of Dacca*, 11 C. L. J. 612.

(s) *Ramamurthi v. Special Deputy Collector, Vizagapatam*, 1926, M. W. N. 968 : 99, I. C. 530 : 1927, A. I. R. (M) 114.

(t) *Revenue Divisional Officer v. Vallia Raja of Chirakkal Kavilagam*, 57 L. W. 467 : (1944) 2 M. L. J. 130 : A. I. R. (1944) Mad. 539.

(u) *Tulsi Makhania v. Secretary of State*, 11 C. L. J. 408.

to cancel it or to remit it to him to be recast, modified or reduced. The Court of the L. A. Judge is restricted to an examination of the question which has been referred by the Collector for a decision under section 18, and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained and cannot obtain any order of reference, (v).

Making reference is an act within the jurisdiction and authority of the Collector. Having made the reference it is not open for the Collector or the Secretary of State to say that the reference was wrongly made, although ground for saying so may be that the application was belated by the owner. The Court does not sit on appeal over the Collector and the L. A. Act does not give any authority to the court either in express terms or by implication to go behind the reference, (w). A court has no jurisdiction to deal with objections except those which were made by persons who were parties to the proceeding before the Collector and which brought about the reference, (x). In a reference under section 18 of the L. A. Act it is not open to the special judge to go into questions raised by parties who did not object to the award and apply for a reference, (y).

The ordinary rule in a proceeding under the L. A. Act is that a party who had raised no objection to the apportionment of compensation made by the Collector, must be taken to have accepted the award in that respect as such person, upon a reference made by some other party who considers himself aggrieved by the award of the Collector, is not entitled to have it varied for his own benefit. In other words the civil court is restricted to an examination of the question which has been referred by the Collector for decision and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained any order of reference. But the rule is inapplicable to a case where the scope and object of reference obtained by the aggrieved party was not to settle the question of apportionment as between himself and the other party who had raised no objection but merely to obtain a final benefit for both, (z). It has been observed that unless an objection is specifically taken with regard to a matter stated in the award of the Collector, such question can not be urged at the time of the hearing of the case before the Court, (a).

Their Lordships of the Privy Council have held in *Rai P. N. Mullick Bahadur v. Secretary of State* (b), that the jurisdiction of the courts in land acquisition matters is a special one arising only when a specific objection is

(v) *B. I. S. N. Coy. v. Secretary of State*, 38 C. 230 : 15 C. W. N. 87 : 12 C. L. J. 505. See also *Secretary of State for India v. B. I. S. N. Co.*, 15 C. W. N. 848 : 13 C. L. J. 90 (P. C.).

(w) *Secretary of State v. Bhagwan Pershad*, 1929, A. I. R. All. 769.

(x) *E. Taylor v. The Collector of Purnea*, 14 C. 423 : *Mohamed Safi v. Haran Chandra*, 12 C. W. N. 985 ; *Probal Chandra Mukherjee v. Raja Peary Mohan*, 12 C. W. N. 987.

(y) *Gobindo Kumar Roy Choudhury v. Debendra Kumar Roy Choudhury*, 12 C. W. N.

(z) *Bejoy Chand Mahatab v. P. K. Majumdar*, 13 C. L. J. 159.

(a) *Secretary of State v. Fakir Mahammad*, 45 C. L. J. 185 : 101 I. C. 349 : 1927 A. I. R. (C) 415.

(b) *Rai Pramatha Nath Mullick Bahadur v. Secretary of State*, 57 I. A. 100 : 57 Cal. 1148 : 51 C. L. J. 154 : 34 C. W. N. 289 (P. C.) : 122 I. C. 536.

taken to the Collector's award and confined to the consideration of that objection. When, therefore, it is found that the only objection taken was to the "amount of compensation" the Court cannot consider an objection to measurement which is a distinct objection under the L. A. Act.

When an objection has been taken under one of the headings mentioned in section 18 of the L. A. Act, and a reference made in consequence, it is not open to the claimant to attack the award upon objection falling under some other heading. The judge is to determine the matter of the award to the extent comprised within the objection and apart therefrom the award is final under section 12 of the L. A. Act. New objection belonging to the same category may be gone into and even if fresh objections to the award be entertainable, a judge is justified in refusing to entertain it on a ground of delay, (c). When a case is referred under section 18 of the L. A. Act the whole case is referred subject to the limitation contained in section 26 of the Act and not merely any particular objection and the District Judge is empowered, indeed bound, to consider the question of compensation awarded in its entirety. Section 21 of the Act authorises the judge to confine his enquiry into valuation of the interests of persons affected by the Collector's reference, but the section means the admitted interests. If there is any dispute as to the relative value of such interests the judge should determine the total amount payable for the land leaving the question of apportionment to be decided in a separate proceeding, (d). Upon a reference under section 18 of the L. A. Act made at the instance of some claimants, another person who was one of the claimants before the Collector and the nature of whose claim was set out in the reference, is a person who is entitled to be present at the hearing of the reference. Mention of his claim in the Collector's reference under section 18, amounted to a reference under section 30, (e). The jurisdiction of the Court on a reference by the Collector is a special jurisdiction. If the only objection is to the amount of compensation, that alone is the matter referred to and the Court has no power to determine or consider anything beyond what is referred. The question of title to the land acquired is therefore not relevant in a reference on the question of amount of compensation only, because in an enquiry as to the amount of compensation only the question is how much more the claimant is to get and how much more is the Government to pay. The only question is the additional amount of compensation. It does not involve the determination of the questions of the right to claim or the liability to pay any additional compensation, (f). If a claim for compensation for injurious affection on account of severance under the item "thirdly" in section 23 of the L. A. Act, has not been made in reply to notice under sec. 9 of the Act, such

(c) *Hooghly Mills v. Secretary of State*, 12 C. L. J. 489 : *Pramatha Nath Mullick v. Secretary of State*, 40 C. L. J. 105.

(d) *Fink v. Secretary of State*, 34 C. 599.

(e) *Surendra Nath Tagore v. K. S. Banerjee*, 29 C. W. N. 340 (1925) A. I. R. (C) 630.

(f) *Province of Bengal v. Shayamapada Banerjee*, 44 C. W. N. 411 ; 187 I. C. 364 : 1940 A. I. R. (C) 56.

a claim cannot be made or allowed for the first time in a reference to the court under section 18 of the Act.

Procedure of Court in Reference :—Section 53 of the L. A. Act provides that “save in so far as they may be inconsistent with anything contained in the Act the provisions of the Code of Civil Procedure shall apply to all proceedings before the court under the Act.” Hence land acquisition proceedings before the court take as nearly as possible the forms of a civil suit and the provisions of the Code of Civil Procedure apply to the proceedings. In a proceeding for the ascertainment of compensation on a reference under section 18, the claimant is to be regarded as plaintiff and the Government as defendant, (g). The L. A. Act contemplates two perfectly separate and distinct forms of procedure, one for fixing the amount of compensation described as being an award (an appeal from that award or of any part of that award is given to the High Court under section 54 of the Act) and the other for determining in case of dispute the relative rights of the persons entitled to the compensation money. When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end. The duty of the Collector in case of dispute as to the relative rights of persons together entitled to the money is to place the money under the control of the court and the parties then can proceed to litigate in the ordinary way to determine what their rights and title to the property may be, (h).

The Collector has under section 11 to enquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation he has to apportion the said compensation among all the persons known or believed to be interested in the land of whom, or of whose claim he has information. Under section 3(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of the land under the Act. It is quite possible that a person may be interested in the compensation money without having an interest in the land in the legal sense of the term. The Act does not indicate how the Collector is to effect the apportionment and sections 20 and 21 which deal with the proceedings of the Court when a reference has been made under section 18 are also silent on the question. It is not correct that in apportionment the market value of each interest is to be ascertained. The various rights of female members of a Hindu undivided family in the joint family property had no market value though such members were interested in the compensation money. What the Collector and Court have to do is to apportion the sum awarded amongst the persons interested as far as possible in proportion to the value of their interests and it is impossible to lay down any general rule which can be followed. *In Re the L. A. Act, In the matter of Pestonji Jahangir.* (h-1)

(g) *Municipal Corporation, Pabna v. Jogendra Narain Raikut*, 13 C. W. N. 116.

(h) *T. B. Ramachandra Rao v. A. N. S. Ramachandra Rao*, 35 C. L. J. 545 ; 26 C. W. N. 713 (P. C.).

(h-1) *In re Pestonji Jahangir*, 37 B. 76.

The Order of procedure of court in L. A. cases :—In Land Acquisition proceedings, the most desirable thing and the ordinary rule no doubt, is that the amount to be apportioned should first be determined before the task of apportionment is taken up but there is no inflexible rule as to, when there is a dispute as regards apportionment and a dispute as regards valuation, which should be taken up first. Where, therefore, it will be manifestly unjust to take up the question of valuation without first deciding at least the principles on which the question of apportionment should be decided and to decide the latter question first would result in no possible injury to the other parties to the proceedings, the apportionment matter be taken up first. The Land Acquisition Collector made an award for all the interests in land, proprietor's interest, two sets of intermediate tenure holders' interests, and interests of tenant in possession apportioning the same. The proprietors alone objected to the apportionment saying that the tenant was a thika tenant and was entitled to the value of the land, it was to be done on the basis that it was agricultural as it originally was and not on the basis of the present character which it acquired later. None of the other parties objected to the valuation. The prayer of the proprietors that the dispute as regards apportionment should be decided first, since he would be fighting the valuation cases in vain if the award in respect of the small sum apportioned to his share as superior landlord stood—was rejected by the Land Acquisition Judge and against the said order, the High Court was moved on ground of manifest injustice, held that the rejection was bad and in the special circumstances of the case the dispute as regards apportionment should be taken up first and then the dispute as regards valuation, (i).

Jurisdiction of court to decide question of title :—In *E. Taylor v. The Collector of Purnea*, (j), the High Court observed ; “It must be borne in mind that this Act (X of 1870) confers a special and limited jurisdiction upon various classes of people to decide certain questions and they have only power to decide those questions with which the Act enables them to deal. We need not trouble ourselves with the sections dealing with the powers of the Collector. We have to do with those sections which affect the powers of the judge. The Act provides for two classes of reference to the Judge and the judge can decide only those things which arise out of those references. The first class of reference is to award compensation under section 15 and the second class of reference is for the apportionment of compensation under section 38, and an appeal to this court from those decisions is given in certain limited cases. The result is that the court has power under proper reference to decide what compensation shall be awarded and to whom it shall be paid. And it must be taken now on the decisions that for those purposes the Judges has power to decide questions of title ; that can no longer be disputed, (k).

(i) *Kumar Bharat Nath Mitra v. Ram Swarup Saraogi*, 55 C. W. N. 133 ; A. I. R. 1951, Cal. 392.

(j) *E. Taylor v. The Collector of Purnea*, 14 C. 423.

(k) *Raja Nilmonnee Sing Deo Bahadur v. Rambahdhu Roy*, 7 C. 388.

In *Imdad Ali Khan v. The Collector of Farakhabad* (l), it has been laid down that section 15 of the L. A. Act (X of 1870) contemplates a reference when the question of the title to the land arises between the claimants who appear in response to the notice issued under section 9 and who set up conflicting claims one against another as to the land acquired which, the District Judge as between such persons can determine. In the Full Bench case of (m), it has been held that there is nothing in the section to suggest that the Judge should not decide, as between rival claimants, to compensation, whether those claimants respectively claim the whole amount or a proportionate part only, all *questions of title* upon which their right to share in the amount and the proportion to be awarded to them respectively, would depend. "The Collector has no power to make a reference to the Dist. Judge under section 15 of Act X of 1870 in cases in which he claims the land in respect of which such reference is made on behalf of Government, and denies the title of other claimants, and the Dist. Judge has no jurisdiction to entertain or determine such reference," (n).

Hence it follows that whenever a question of title arises between rival claimants, it must under the terms of the L. A. Act be decided in the case, and cannot be made the subject of a separate suit, (o). In this connection it is important to note the distinction between a reference made under section 18 of the L. A. Act and one made under section 30 thereof. The distinction is that the reference under section 30 is made solely on the question of title by the Acquisition Officer of his own motion, while the reference under section 18 is made on the application of persons interested in the compensation money and not by the acquiring officer of his own motion (p). Hence it is quite clear that the court in a L. A. case can go into question of title for the purpose of determining which of the contending parties is entitled to the compensation : it is not bound to award compensation to the ostensible owner in possession at the time of the acquisition, (q).

Jurisdiction of court to add parties :—The addition of parties by the civil court, who have not been made parties to the reference by the Collector is wholly inconsistent with the L. A. Act, and therefore the civil court cannot add such parties to a land acquisition proceeding before it, nor can it award any compensation to one who joined in the proceeding for the first time in the court of the special judge, without applying to the Collector for any order of reference, (r). In a reference under section 18 of the L. A. Act, it is not open to the special judge to go into questions raised by parties who did not object to the award and apply for a reference. When the reference under section 18 related to a dispute regarding apportionment between parties A and B, it was held that the special judge was wrong in allowing parties

(l) *Imdad Ali Khan v. The Collector of Farakhabad*, 7 A, 817.

(m) *Husaini Begum v. Husaini Begum*, 17 A. 573 (575).

(n) *Crown Brewery, Mussourie v. The Collector of Dehra Dun*, 19 All. 339.

(o) *Babujan v. Secretary of State*, 4 C. L. J. 256 ; *Nihal Kuar v. The Secretary of State*, 13 I. C. 550.

(p) *Hazura Singh v. Sunder Singh*, 97 P. L. R. 1919 : 53 I. C. 589.

(q) *Krishna Kalyani Dassi v. R. Braumfield*, 20 C. W. N. 1028 : 36 I. C. 184.

(r) *Mahanand Roy v. Sris Chandra Tewary*, 7, I. C. 10.

C and D to be added on their own application and contest the award on a ground not raised in the reference (s). Under part III of the L. A. Act the special L. A. Court has no jurisdiction to deal with objections except those which are made by persons who are parties to proceedings before the Collector or who have since within six months applied to the Collector to make a supplementary reference in their case. The L. A. Act does not contemplate any decision by the Special Court unless reference is made by the Collector, (t). Where in respect of a dispute as to the apportionment of compensation between proprietor and three mukarraridars, a reference is made by the Collector under section 18 of the Land Acquisition Act on applications made by the proprietor and one of the mukarraridars, the Court having seisin of the reference has power to investigate the claims of other mukarrariders also, although there is no reference on their behalf and an application by them for reference would be beyond time under proviso (a) to section 18 of the Act. Their claims, or in other words the valuation of their interest could not be lost sight of or left undetermined in valuing the interest of the proprietor or the co-sharer mukarraridars. In complying with section 21 of the Act the Court has to consider the claims of other mukarraridars as well, (u).

Where court should add parties :—When under section 30 of the L. A. Act I of 1894, the Collector has referred to the District Judge a dispute as to the apportionment of compensation settled under section 11 of the Act, it is not *ultra vires* of the District Judge to add a party to the proceedings before him having regard to section 52 of the Act and section 32 of the Code of Civil Procedure (1882). During the pendency of the proceedings before the L. A. Collector the property acquired was sold for arrears of revenue. The sale was confirmed after the Collector had made his award. At the instance of the defaulting proprietor the Collector made a reference to the civil court upon a question of the apportionment of the compensation. The purchaser applied to the civil court to be made a party to the proceedings, but his application was refused. It was held that the purchaser at the revenue sale was entitled to be made a party to the proceedings but he could urge only such objections as might have been urged by the defaulting proprietor (v). "When a person obtained an attachment of the compensation money, in so far as it represented the interest of his judgment-debtor before a reference was made, after the reference and during the pendency of the proceedings in the civil court the judgment-debtor put in a petition of compromise, it was held that the effect of the compromise was to transfer the interest which the judgment-debtor possessed, to other claimants and such transfer was contrary to the provisions of section 64 of the Code of Civil Procedure, 1908, and such compromise could not be given effect to as it was unlawful within the meaning of Or. 23, R. 3., C. P. C., that the attaching creditor should have been made

(s) *Gobinda Kumar Roy Chowdhury v. Debendra Kumar Ray Chowdhury*, 12 C. W. N. 98.

(t) *Prabal Chandra v. Raja Peary Mohan*, 12 C. W. N. 987.

(u) *Nagendra Nath Sahi v. Bhagwati Prasad Narayan Singh*, 223 I. C. 553 : A. I. R. (1946) Part 447.

(v) *Pramatha Nath Mitra v. Rakhal Das Addy*, 11 C. L. J. 420.

a party in the proceedings in the civil court." Mookerjee J. in delivering the judgment, held that "the position is obvious, that the claim of the petitioner ought not to have been ignored, he should have been made a party and his claim properly investigated. We may add and it has not been disputed, in view of the decisions in *Pramatha v. Rakhal* (w) and *Dwarkanath v. Kishorilal* (x) and *Baoli v. Hamijuddi* (y) it cannot be successfully disputed that if it is held that the apportionment question should not have been disposed of without opportunity afforded to the petitioner to establish his allegations, this Court has ample powers to set matters right," (z).

Upon a reference under section 18 of the L. A. Act made at the instance of some claimants another person who was one of the claimants before the Collector and the nature of whose claim was set out in the reference is a person who is entitled to be present at the hearing of the reference because mention of his claim in the Collector's reference under section 18 amounted to a reference under section 38, (a). In a reference under section 18 of the Land Acquisition Act relating to the market value of the property acquired which formed part of a waqf estate some of the mutwallis applied to the judge to be made parties. It was held that in references under the L. A. Act whether in the matter of apportionment or valuation the addition of parties is under certain circumstances permissible; that the addition of parties does not violate principle that in hearing a reference under the L. A. Act the court can only deal with an objection which has been referred to it and cannot go into any question raised for the first time by a party who has not referred any question or any objection to it under section 18 of the Act, (b). When during the pendency of a suit or appeal a person who has a decree in his favour and who is prima facie entitled to the property, institutes or defends a proceedings in respect of the property, the proceedings can be continued by the person who ultimately succeeds in the litigation. Any order passed in respect of the property would enure for the benefit of the successful litigant and he is the person who on the reversal of the judgment of the lower Court would be entitled to continue the proceedings. In a litigation between two persons as to a property, one of them was held entitled to it, and during the pendency of an appeal therefrom, the successful party applied in L. A. proceedings with regard to the property, for reference to the court under sec. 18 of the L. A. Act. In appeal the property was held to belong to the other party. It was held that such other party was entitled to avail himself of the reference made at the instance of his opponent who was interested at the time in making the application for reference within the meaning of sec. 18 (1) of the L. A. Act, (c).

(w) *Pramatha Nath v. Rakhal Das*, 11 C. L. J. 420.

(x) *Dwarka Nath v. Kishori Lal*, C. L. J. 426.

(y) *Baoli v. Hamijuddi Mondal*, 12 C. L. J. 267.

(z) *Golap Khan v. Bholanath Marik*, 12 C. L. J. 545 : 71 Cal. 481.

(a) *Surendra Nath Tagore v. K. S. Bonerjee*, 29 C. W. N. 340.

(b) *Hashim Ibrahim Saleji v. Secretary of State*, 31 C. W. N. 384 : 101, I. C. 539 : A.I.R. (1927) Cal. 352.

(c) *Venkata Krishnaya Garu v. Secretary of State*, 39 M. L. T. 551 : 27 L. W. 253 : 107 I. C. 503 : 1928 A.I.R. (Mad.) 89.

It has been held that presumptive shebait is "persons interested" within the meaning of sec. 3 of the L. A. Act. The expression "person interested" in that section includes who, though they may have no right to take the compensation money then and there have an interest therein in future. The position of a shebait in relation to the next taker of that office is analogous to that of a Hindu female heir taking a limited estate in relation to the expectant reversioner. Remote presumptive shebait is interested in the protection of the debuttur state and so are persons who may be added as parties to a suit the object of which is to challenge an alienation made by the existing shebait, (d).

When Government should be added as party :—When of several claimants only one, who was among those held to be not entitled to compensation, refuses to accept the collector's award and obtains a reference to the Court on the question of the amount of compensation and also on the question as to who is entitled to get it and files petitions of compromise before the court whereby other claimants admit his title and give him the right to get the excess amount of compensation, if any awarded, the Government has right to challenge such claimant's title and is a necessary party in whose presence the question ought to be determined. The decision of the Court in such a case in the absence of the Government was held bad in law and was set aside, (e).

Restriction of claims and amendment of petition of reference :—The court hearing a reference under sec. 18 of the L. A. Act has power to allow an amendment of the petition for reference provided it does not introduce a new matter outside the matter referred. Accordingly, in dealing with a reference as to the amount of compensation, the court has power to allow an amendment of the petition for reference by way of increasing the sum asked for by claimant (f). Though in *Province of Bengal v. Ram Chandra Bhosica* (g), it was held that the words, "require that the matter be referred by the collector for the determination of the court" in sec. 18(1) of the L. A. Act, merely mean that the point on which the collector's award is disputed may be referred to the court at the instance of the claimant. When such a dispute has been referred to the court the scope of the enquiry before the Court should be limited within the bounds of the dispute which had actually arisen before the Collector. Therefore, on a reference made to the court for determination of the amount of the compensation, the court has no jurisdiction to allow the claimant to amend his application by increasing claim to a figure far beyond that which he claimed before the Collector, (h). Again it has been laid down in *Etappa Naicker : in re* (i), that in an application for a reference under sec. 18 of the L. A. Act, all that the applicant has to do is to state that he objected to the

(d) *Nanda Lal Mullick v. Kumar Arun Chandra Sinha*, 41 C. W. N. 464.

(e) *Province of Bengal v. Shyamapada Banerjee*, 44 C. W. N. 411.

(f) *The Province of Bengal v. P. L. Nun*, 1 L. R. (1945) 2 Cal. 27 : 49 C. W. N. 206.

(g) *Province of Bengal v. Ram Chandra Bhosica*, 1 L. R. (1943) 1 Cal. 69.

(h) *Province of Bengal v. Ramchandra Bhosica*, 1 L. R. (1943) 1 Cal. 69.

(i) *Etappa Naicker in re*. 57 L. W. 179 : 1943 M. W. N. 213 : (1943) 1 M. L. J. 278 : 209 J. C. 636 : A. I. R. (1943) Mad. 337.

amount of compensation awarded ; it is not incumbent on him to state whether he claimed compensation at a higher rate originally demanded by him or whether he limited it to some lesser amount. The court has power to award compensation at the higher rate originally claimed notwithstanding that in the application for reference only a lower rate is mentioned. The fact that the lower rate is claimed in the application does not necessitate an amendment of the statement of the claim, as without such amendment the court has power to award the higher rate. Court can allow amendment of the petition for reference by increasing the amount of compensation. But an amendment which will have the effect of introducing a new matter which had not been referred to it by the Collector, cannot be allowed, (j).

Claimant not restricted to the different valuation on different items :—A claimant is not restricted to the different valuations on different items in his petition of reference although he might be held limited to the amount claimed for the entire property in the said petition. Total claim at first was Rs. 2,82,000/- for entire property, land being valued at Rs. 12,000/- per cottah and the structure being valued at Rs. 1,50,000/-. The L. A. Judge enhanced the value of structure to Rs. 1,87,495/-. It was opposed on the ground that the claimant can not claim more than what he has claimed for any particular item in his petition of reference. This was overruled, (k).

Power of Court—Reference under O. 46 r. I, C. P. C. :—A reference made by the Collector to a Court under section 18 of the L. A. Act is neither a suit nor an appeal. The Court is therefore not competent to refer a case for the opinion the High Court under Or. 46 r. I, C. P. C. Code, (l)

Jurisdiction of Court on withdrawal of reference by some of the joint claimants :—Where a reference under sec. 18 of the Land Acquisition Act 1895, was made by four brothers, all members of a joint Mitakshara family acting jointly, and the claim was for one entire amount but one of the referring claimants withdrew from the case at a later stage and service of notice of the reference involving the claim of the entire amount on such a claimant only, the Land Acquisition Judge proceeded with the claim petition and made an award for the entire sum representing the interest of all the four brothers and an appeal against the same was made to the High Court by the Province of Bengal, held, that the reference was properly filed and entertained and the learned judge was perfectly justified in making the award. The mere fact of withdrawal of a referring claimant at a later stage of the proceedings when a fresh petition by the other referring claimants would be barred, would not affect the validity of the proceedings continued thereafter

(j) *State v. Kora Eapen*, I.L.R. (1956). Trav. Co. 1057 : A.I.R. 1957 Trav. Co. 157.

(k) *Charu Prakash Ghosh v. State of West Bengal*, I. L. R. 1969, Cal. 1 ; 72 C. W. N. 235 (D. B.). Also see *Province of Bengal v. P. L. Nair*, A. I. R. 1945 Cal. 312 ; *Province of Bengal v. Ram Chandra Bhosica*. A. I. R. 1944 Cal. 247 ; *Promotho Nath Mullick v. Secretary of State*, 57 I. A. 100 ; *Raja Vyricherla Naraina Gajapatiraju v. The Rev. Div. Officer*, 66, I. A. 104.

(l) *Laxmanarao Deshmukh v. Collector of the Nagpur District*, I. L. R. (1945) Nag. 3999 : 1945 N. L. J. 274 : A. I. R. (1945) Nag. 146.

in respect of the entire amount or of the award made therein, since the claim was not severable and the reference was joint, (*m*).

Matters to be considered by Court in determining compensation :—See section 23 and notes thereunder.

Decision of the court and its effect :—See section 26 and notes thereunder.

Proceedings to be in open Court

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.

Notes

Legislative History :—This was s. 53 of the old Act X of 1870 which ran as follows :—

“Every proceeding under section 22 shall take place in open Court ; and all persons entitled to appear plead and act, or to appear and act (as the case may be), in such proceeding.”

Nature of proceedings in court :—In England the proceedings at the trial are similar to those in the High Court. The Under-Sheriff presides, the witnesses and jury are sworn on oath, the claimant's case is opened and witnesses are called in support of the claim. After examination of the witnesses by the claimant or his legal representative, cross-examination on behalf of the promoters, the case of the promoters is placed before the jury. Addresses on behalf of the promoters and claimant follow, the Under-Sheriff sums up, and the jury find their verdict. The jury may award more than the amount claimed in respect of any particular item, (*a*). The proceedings under Part III of the L. A. Act I of 1894 are judicial proceedings and by virtue of section 54 the court is subordinate to the High Court in its appellate jurisdiction. The proceedings which culminate in the Court's award commence with the filing of the application under section 18. As soon as it is filed the matter of the amount of proper compensation resumes a litigious form and becomes a contentious proceeding between the owner and the Collector. As was held by Chandravarkar J., in *re. Rustomji Jijibhoy* (*b*), the application under section 18 is in the nature of a plaint in suit. It is the first step in the judicial proceedings. It follows therefore that the judicial proceedings must be held in *coram publico* and parties are entitled to be represented by pleaders as in a suit and the provisions of the Code of Civil Procedure apply to all the proceedings before the Court under this Act,

(*m*) *Province of Bengal v. Radha Gobinda Thakur*, 55 C. W. N. 110.

(*a*) *Robertson v. City and South London Railway Co.*, 20 T. L. R. 395.

(*b*) *In re Rustomji Jijibhoy*, 30 Bo. 341.

vide section 53, (c). The proceedings before the Court under the section is of course judicial, and, therefore entirely distinct from the Collector's proceedings and in no sense a continuation of such proceedings. Being a judicial proceeding the decision in it must be based on evidence before the court or admissions made by the opposite party, (d).

Delegation of functions by court :—The claimant not accepting the Collector's award was referred to civil court. The subordinate judge appointed a pleader as Commissioner to take evidence as to valuation, and to report ; on receipt of the report the Sub-judge heard the parties, accepted the report and decided the case. The Secretary of State appealed to the High Court. It was held, that under section 22 of the Land Acquisition Act, the proceeding must be held in open court. The Sub-judge was not right in delegating his judicial function to the Commissioner. The claimant must be treated as plaintiff and the Government as defendant, the burden of proof being on the plaintiff, (e).

Nature of enquiry :—The question referred to by the Collector under section 18 whether of valuation or apportionment should be thoroughly investigated according to judicial principles for trial of suits.

Position of parties :—When a reference is made to a civil court the claimant occupies the position of the plaintiff in a civil suit and the Government as defendant, (f). A company or a corporation for whose benefit land may be acquired is not a necessary party in land acquisition proceedings. sec. 50 of the L. A. Act allows such company or corporation to appear simply for the purpose of watching the proceedings or aiding the Secretary of State. Such a company or corporation has no power to ask for a reference under sec. 18 of the Act nor has it the right to appeal against the decree made upon a reference (g). The real party to a proceeding in land acquisition case is not the Collector but the Government, (h). In the litigation to which the Crown is a proper party, it is the Secretary of State for India who alone can represent it, (i).

Parties in a reference after declaration of independence in India :—Article 12 of the Indian Independence (Rights, Property and Liabilities) Order, 1947 applies to proceedings which involved the question of compensation for acquisition of land which was a question with respect to the value of land and was, therefore a "legal proceeding with respect to property" within the meaning of section 12. By the Constitution of India the State of West Bengal is the successor to the Province of West Bengal. In view of section 6 of Indian General Clauses Act, accrued rights and liabilities and proceedings in

(c) *Fink v. Secretary of State*, I. L. R. 34 Cal. 599.

(d) *Shawe Gaung v. The Collector*, 4 B. L. R. 71.

(e) *Secretary of State v. Baij Nath Goenka*, 12 C. W. N. cc. (notes).

(f) *Ezra v. Secretary of State*, 30 C. 36 : 7 C. W. N. 249 ; *Behari Lal Sar v. Nundo Lal Gossain*, 11 C. W. N. 430.

(g) *Chairman Howrah Municipality, In the matter of* : 9 C. W. N. LXVI ; *The Municipal Corporation of Pabna v. Jogendra Narain Raikut*, 13 C. W. N. 116 : 4, I. C. 332.

(h) *Collector of Akola v. Ananda Rao*, 7 N. L. R. 88 : 11 I. C. 690.

(i) *Government of Bombay v. Esuffali Salebhoy*, 12 Bom. L. R. 34 : 5, I. C. 621.

that connection are not affected by the repeal of the Independence Act, 1947, (j). It will therefore appear that the State or the particular province in which the land is acquired, is the proper party in the place of Secretary-of-State-for-India-in-Council as before.

Framing of issues :—When a reference is made to Court under s. 18, of the L. A. Act, the Court can consider in framing the issues not only the pleading i. e., the statement of claim, the award and the objections thereto, but also the allegations of the pleaders where they are not inconsistent with pleadings in view of s. 53 of the Act. The court has therefore jurisdiction to frame an issue which does not directly arise from the objections taken, provided that it is not totally inconsistent with them. Though section 18(2) requires that the application for a reference to Court shall state the grounds on which the objection is taken, there is a sufficient compliance with the provisions of this sub-section if the application states on which of the four heads of objection detailed in sub-section (1) the applicant proposes to rely. When an objection to the amount of compensation has been taken, the Court has jurisdiction to work out the amount of compensation in a manner different from that which has been adopted in the statement of objection, (k).

Burden of proof :—It has been repeatedly held that though the proceedings before the Collector are not strictly judicial proceedings, the Court of the Special Judge on a reference under s. 18 of the Act is in effect (though not strictly in law) the appellate Court and the claimant who has carried the matter in reference before it must show, the burden is on him, that the Collector is wrong, (l). The onus of proving the value of land acquired lies upon the claimant and to establish the value and selling prices of neighbouring places, it is necessary for him to adduce evidence of numerous or at least sufficiently numerous instances of sales of land in similar conditions and for similar purposes in the neighbourhood, (m). The burden of proof is ordinarily on the claimant in the court of the special Judge to prove that the valuation made by the Collector is insufficient. But the burden must vary according to the nature of the enquiry made by the Collector. If no evidence has been taken by the Collector and if no reasons have been given in his decision to support his conclusion, the claimant has a very light burden to discharge. The *ipse dixit* of a Collector has very little weight and is not *prima facie* evidence of the correctness of his award. The failure of the Collector in making a reference under section 18 of the L. A. Act to state the grounds on which the amount of compensation was determined as required by section 19 clause (d) makes it incumbent on the Collector to justify the award before the Special Judge, (n). Ordinarily when a claimant contests before a civil court, the amount of compensation awarded under the L. A. Act by a Collector, the burden is upon him to show

(j) *Sree Sree Iswar Madan Gopal Jiu v. Province of West Bengal*, 54 C. W. N. 807.

(k) *Revenue Divisional Officer, Vizaagpatam v. Sri Rajah Vyricherla Narayan Gajapathiraju Bahadur Garu*, 1937 M. W. N. 773 : 46 L. W. 492 : 1937 A. I. R. (M) 902.

(l) *Ananta Ram Banerji v. The Secretary of State*, I.L.R. (1938) 1. C. 231 : 66 C. L. J. 134 : 41 C. W. N. 1291 : 1937, A. I. R. (C) 680.

(m) *Biswa Ranjan v. Secretary of State*, 11 I. C. 62.

(n) *Harish Chandra Neogi v. Secretary of State*, 11 C. W. N. 875.

that the amount so awarded is calculated on a wrong basis, but when such award was made without taking any evidence, that burden becomes very light (o). If the compensation is fixed by the Collector either without any evidence but merely on conjecture, or on materials which appear to be irrelevant ones the onus which lies on the claimant is a very slight one. Such onus would be discharged on the claimant proving that the Collector had proceeded either without any legal evidence or the materials on which he had relied were not relevant ones. On such proof the onus shifts to the other side, (p).

The acquiring officer's award is, of course, strictly speaking not an award at all, but an offer. It is based on enquiry and inspection and the officer responsible for it is usually a man of experience and local knowledge. He may take evidence but he is not bound to do so, and his proceedings are administrative rather than judicial. But if his award is not accepted and the matter is taken into court, the proceedings are thenceforth judicial in character. The party claiming enhanced compensation is more or less in the position of the plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing prime facie that the award is inadequate, the government must support the award by producing evidence, (q).

Matters to be considered in determining compensation

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)] ;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking

(o) *Marwari Padamji v. Deputy Collector, Adoni*, 27 M. L. J. 106 : 24 I. C. 411 ; *Madhusudan Das v. Collector of Cuttack*, 6 C. W. N. 406 ; *Arunachela Aiyar v. The Collector of Tanjore*, 96 I. C. 279. *Collector of Monghyr v. Bhekdari Mander*, 1940 A. I. R. (P) 362.

(p) *Naresh Chandra Bose v. State of West Bengal*, 59 C. W. N. 757 : A. I. R. 1955 Cal. 398.

(q) *Asstt. Development Officer v. Tayaballi Allibhoy*, 35 Bom. L. R. 763 : 1933 A. I. R. (B) 361 ; *Dhusabhai Polabhai v. Secial L. A. Officer*, A. I. R. 1959 Bom. 520 : 60 Bom. L. R. 532.

¹ These words and figures were substituted for the words and figures "declaration relating thereto under section 6" by s. 7 of the Land Acquisition (Amendment) Act, 1923 (31 of 1923).

possession of the land, by reason of severing such land from his other land ;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings ;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ; and

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of the acquisition.

State Amendments

1. Bihar.—By *Bihar Act XI of 1961, Sec. 10.*

[See under Part III, Chapter III, Bihar (1)].

At the end of clause first of sub-section (1) of section 23 of the said Act, the words, brackets and figures “or the market value of the land at the date of the publication of the declaration under section 6, if there has been no notification under section 4, sub-section (1)” shall be added.

By *Bihar Act XXIII of 1948, Schedule, Para 3* :—

(1) In sub-section (1) of section 23, for the words, figures and brackets “publication of the notification under section 4, sub-section (1)” in clause *first* and for the words and figure “publication of all declaration under section 6” in clause *Sixth* the following words and figures shall be deemed to be *substituted*, namely,—

“Publication of the notification under sub-section (2) of section 3 of the Bihar Restriction of Uses of Lands Act, 1948.”

(2) At the end of section 23 of the said Act, the following shall be deemed to be *added*, namely,

(3) For the purposes of clause *first* of sub-section (1) of this section—

- (a) the market value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market value is to be determined under that clause ;
- (b) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him ;

- (c) if any person without the permission of the Collector required by section 5 of the Bihar Restriction of Uses of Lands Act 1948, has erected, re-erected, added to or altered any building, then any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded ;
- (d) if the market value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was in good faith and not in contemplation of proceedings for the acquisition of land being taken under this Act ;
- (e) if the market value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market value shall be deemed to be the market value of the land if put to ordinary uses ; and
- (f) when owner of the land or building has after the passing of the Bihar Restriction of Uses of Lands Act, 1948, and within two years preceeding t e date with reference to which the market value is to be determined, made a return under section 102 of the Bihar and Orissa Muncipal Act, 1922, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court otherwise direct and the market value may be determined on the basis of such rent.

Provided that where any addition to, or improvement of the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement.

[See under Part III, Chapter III, Bihar-1.]

2. Maharashtra.—By *Bombay Act XVII of 1960* (which has been repealed by Maharashtra Act XXXVIII of 1964).

(i) for section 23, *substitute* the following namely,—

“23. *Matters to be considered in determining compensation.*—In determining the amount of compensation to be awarded for the land or any interest therein acquired under this Act, the Court shall take into consideration the following :—

- (1) the market value at the date of the publication of the notification under section 4, sub-section (1) or at the first day of July 1959, whichever is less ;
- (2) the use to which the land was put at the date of such notification ;
- (3) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time when the possession was taken from him ;
- (4) the damage (if any) sustained by the person interested at the time of the possession being taken from him by reason of severing such land from his other land ;

- (5) the damage (if any) sustained by the person interested at the time of the possession being taken from him of the land by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner or his earnings ;
- (6) if in consequence of the acquisition of the land the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

[See under Part III, Chapter IV, Bombay (5)].

3. **Madhya Pradesh (Bhopal area).**—By *M. P. Act V of 1959, sec. 3* :—

- (i) to clause beginning with the word "*first*" the following proviso shall be added namely :—

"Provided that when the market value of any land situate in Bhopal area, in respect of which the date of publication of the notification aforesaid is after the commencement of the Land Acquisition (Madhya Pradesh Amendment) Act, 1957 (21 of 1958), is in excess of its market value as on the 1st day of October, 1955, the market value thereof shall be deemed to be its market value as on the 1st day of October, 1955"; and (ii) after sub-section (2), the following sub-section shall be inserted, namely :

- "(3) Where in respect of any land situate in Bhopal area the market value thereof is determined in accordance with the proviso to clause *first*, then in addition to such market value and the additional sum provided under sub-section (2), the Court shall award such further sum not exceeding twenty-five per centum of such market value as may be deemed fit in consideration of the appreciation in the price of the land concerned by reason of the location of capital at Bhopal, regard being had to the situation of such land."

4. **Madras (Tamil-Nadu).**—By *Madras Act XXIII of 1961*.

"3. Where any land is acquired for the execution of any housing scheme, the Land Acquisition Act, 1894 (Central Act I of 1894) as in force in the State of Madras, shall apply subject to the following modifications, namely :—

- (1) In section 23 of the said Act—

- (a) in sub-section (1).

- (i) for clause *first*, the following clause shall be substituted, namely :—

"first, the market value of the land at the date of the publication of the notification under section 4, sub-section (1) or an amount equal to the average market value of the land during the five years immediately preceeding such date whichever is less";

- (ii) in clause *fifthly*, the word "*and*" occurring at the end shall be omitted ;

- (iii) in clause *sixthly* the word “and” shall be added at the end ;
and
- (iv) after clause *sixthly*, the following clause shall be added,
namely :—

“*Seventhly* the use to which the land was put at the date of the publication of the notification under section 4, sub-section (1)”.

- (b) in sub-section (2), for the words “fifteen per centum” the words “five per centum” shall be substituted.

[See under Part III, Chapter IX, Madras (7)]

5. West Bengal.—By *W. B. Act XXX of 1963, sec. 4* :—

- (1) In section 23, of the said Act.—

- (i) in clause *fifthly*, the word “and” at the end shall be omitted and shall be deemed always to have been omitted ;
- (ii) in clause *sixthly*, for the words, “possession of land” the words “possession of land ; and” shall be substituted and shall be deemed always to have been substituted ;
- (iii) after clause *sixthly*, the following clause shall be added and shall be deemed always to have been added, namely :—
“*seventhly* the loss of earning, if any, caused to the person interested, in consequence of the acquisition of the land, where earning was derived directly from such land.”

- (2) after sub-section (3), the following sub-section shall be added and shall be deemed always to have been added, namely :—

- “(4) Compensation payable to a bargadar for loss of earning under clause *seventhly* of sub-section (1) shall not exceed three times the net average annual income which derived or might be derived from the land during three years immediately preceding the date of acquisition.

Explanation.—The net annual income of a bargadar in any year shall be taken to be fifty per cent of the total produce of the land cultivated by him in that year.”

[See under Part III, Chapter XV, W. B. (21)]

6. Madras (City).—*Madras Act XXXVII of 1950, s. 73 and Schedule, Para 6.*

- “(1) In sub-section (1) of section 23, for clauses *first* and *sixthly* the following clauses shall respectively be deemed to be substituted, namely,—

“*first*, the market value of the land—

- (a) at the date of the issue of the notice under clause (b) of sub-section (3) of section 40 of the Madras City Improvement Trust Act, 1950, in case the land is proposed to be acquired in pursuance of the clause ; and
- (b) at the date of the first publication of the notice under s. 47 of that Act, in any other case.”

“*Sixthly*, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the date referred to in paragraph (a) or paragraph (b); as the case may be, of clause first, and the date on which the Collector takes possession of the land.” (2) In the same section, sub-section (2) shall be omitted and in lieu thereof the

following sub-section shall be deemed to have been *substituted* namely—

- (2) For the purposes of clause *first* of sub-section (1) of this section—
 (b) if the market value of the said land has been increased or decreased owing to the land falling within or near the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;
 (b) if any person, otherwise than in accordance with the provisions of this Act, erects, re-erects, adds to, or alters any wall or building so as to make the same project into the street alignment or beyond the building line prescribed by any scheme made under this Act, then, any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded."

[See under Part III, Chapter IX, Madras (1)]

7. **Calcutta.**—By *Calcutta Municipal Act XXXIII of 1951, s. 524.*

[See under Part III, Chapter XV, W. B. (5)].

By Calcutta Improvement Trust Act No. V of 1911, S. 71 and W. B. Act XXXII of 1955, Section 74 (20-10-1955).

[See under Part III, Chapter XV, W. B. (2)].

8. **Howrah.**—By *the Howrah Improvement Acts 1956.*

[See under Part III, Chapter XV, W. B. (3)].

9. **Andhra Pradesh.**—By *Act XXXII of 1956, s. 3.*

[See under Part III, Chapter I, Andh. Pra. (1)].

10. **Gujarat.**—By *the Land Acquisition (Gujarat Unification and Amendment) Act 20 of 1965.*

[See under Part III, Chapter IV-B, Gujarat (2)].

11. **Vidarbha.**—*Same as in Madhya Pradesh and as given in C. P. Act II of 1922 which applies to Vidarbha area of State of Maharashtra.*

12. **Jubbulpore City.**—By *C. P. and Berar Act III of 1950, s. 293 and Sch. 1, Para 9.*

[See under Part III, Chapter VIII, M. P. (10)].

13. **Nagpur (City).**—By *Nagpur Improvement Trust Act No. XXXVI of 1936.*

[See under Part III, Chapter VIII, M. P. (4)].

14. **Punjab.**—By *Punjab Act IV of 1922, s. 59 and Schedule, Cl. 10.*

[See under Part III, Chapter XII, Punjab (4)].

15. **Uttar Pradesh.**—By *U. P. Act XXII of 1954, ss. 3 & 8 :—*

- (1) (a) In its application to Uttar Pradesh, in section 23, clause *first*, add the following as an Explanation at the end, namely,—

“*Explanation.*—In judging the market value aforesaid in any case where land is acquired for or in connection with sanitary improvements of any kind or planned development due regard shall be had to the insanitary and unhygienic conditions of the land on the date aforesaid.”

- (b) sub-section (2) shall be omitted ;

Note.—The direction in item (b) above to omit sub-section (2) does not apply in respect of a notification under s. 4 issued prior to the

commencement of the Land Acquisition (U. P. Amendment) Act 1954.

By U. P. Act X of 1945, s. 9 and Schedule, Para. 3 :—

(2) In its application to the acquisition of land by the State Government in the controlled area on the road side, in section 23,—

(a) in clause *first* and clause *Sixthly* of sub-section for the words “publication of the notification under section 4, sub-section (1) and the words “publication of the declaration under section 6” the following words shall be deemed to be substituted, namely ; “publication of the notification under sub-section (2) of section 3 of the United Province Road Side Land Control Act, 1945.”

(b) at the end of section 23 the following shall be deemed to be added;

“(3) for the purposes of clause *first* of sub-section (1) of this section,—

(a) the market value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market value is to be determined under that clause ;

(b) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him ;

(c) if any person, without permission of the Collector required by section 5 of the United Provinces Land Control Act, 1945, has erected, re-erected, added to or altered any building, then any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded ;

(d) if the market value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;

(e) if the market value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, the use shall be disregarded and the market value shall be deemed to be the the market value of the land if put to ordinary uses ; and

(f) when the owner of the land or building has after passing of the United Province Road Side Land Control Act, 1945, and within two years preceding the date with reference to which the market value to be determined, made a return under section 158 of the United Provinces Municipalities Act, 1916, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, same as the court may otherwise direct and the market value may be determined on the basis of such rent ;

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and provisions to the date with reference to which the market value

is to be determined ; the court may take into consideration any increase in the letting value of the land due to such addition or improvement."

. By U. P. Act II of 1959, s. 176 and Schedule II, Para 10 as amended by U. P. Act XIV of 1959, s. 10 (24-9-59).

(3) In its application to the acquisition of land by the Nagar Mahapalika, in section 23,—

(a) In clause *first* and clause *sixthly* of sub-section (1) after the words "publication of the notification under section 4, sub-section (1)" and the words "publication of the declaration under section 6" shall be deemed to be added :—

(i) if the land is acquired under sub-section (3) of section 348 of this Act, the words "or in the case of acquisition under sub-section (3) of Section 348 of the U. P. Nagar Mahapalika Adhiniyam, 1959, of the issue of the notice under sub-section (3) of section 348 of that Act," and

(ii) in any other case, the words "or in the case of acquisition of land under any improvement scheme other than a deferred street scheme under chapter XIV of the U. P. Nagar Mahapalika Adhiniyam, 1959, of the first publication of the notification under section 357 of that Act."

(b) the full stop at the end of sub-section (2) shall be deemed to be changed to a colon, and the following proviso shall be deemed to be added :—

"Provided that this sub-section shall not apply to any land acquired under chapter XIV of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, except—

(a) land acquired under sub-section (4) of section 348 of that Adhiniyam and

(b) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and

(c) gardens not let to tenants but used by the owners as a place of resort."

(c) Sub-section (3) directed to be *added* at the end of section 23 is the same as sub-section (3) added by U. P. Act X of 1945 and given above, subject to the following modifications, namely,—

(i) For clause (c) substitute the following clause, namely—

"(c) if any person without the permission of the Mukhya Nagar Adhikari required by clause (b) of sub-section (1) of section 348 or by sub-section (4) of section 350 of the Nagar Mahapalika Adhiniyam 1959, has erected, re-erected, added to or altered any building or wall so as to make the same project beyond the street alignment prescribed under the said section 348 or within the area specified in sub-section (4) of the said section 350, as the case may be, then any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded ;

- (ii) after clause (e), insert the following as clause (f), namely,—
 “(f) if the market value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market value shall be deemed to be market value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding.”
- (iii) re-letter clause (f) as clause “(g)” and in the clause so re-lettered for the words and figures “the United Provinces Road Side Land Control Act 1945” substitute the words and figures “the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959”.

Legislative history :—This was secs. 24 and 42 of the old Act X of 1870 which ran as follows :—

“24. In determining the amount of compensation to be awarded for land acquired under this Act, the judge and assessors shall take into consideration, *First*, the market value, at the time of awarding compensation, of such land ;

Secondly, the damage (if any) sustained by the person interested at the time of awarding compensation, by reason of severing such land from his other land.

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable in any other manner or his earnings ; and

Fourthly, if in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.”

Sec. 42 of the Act X of 1870 ran as follows :—

“In addition to the amount of any compensation awarded under Part II or III of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition pay fifteen *per centum* on the market value mentioned in section 24.”

Alteration in the mode of assessment :—Part 7 of the Preliminary Report of the Select Committee on the Bill to amend the Land Acquisition Act of 1870 presented to the Council of the Governor-General of India on the 2nd February, 1893 lays down : “In part III we have made some alterations of the Act in detail. Section 24 of the Act (X of 1870) defines matters to be considered in determining compensation. The Committee are of opinion that the Bill introduced last year rightly required the market-value to be taken at the time of the declaration under section 6 and not as in the Act at the time of the award, but this change in the law required the addition to the section of a clause bringing under the consideration of the Court any diminution in the profits of occupation during the period between the declaration and the Collector’s entry into possession, as also the value of any standing crops or trees that may be in the land when he takes possession. The amendment is effected by clause (6). It appears more convenient

to insert here than in a latter part of the Act, the instruction contained in section 42 of the Act that the addition to the owners of the land acquired of fifteen per centum on the market-value shall be given in consideration of the compulsory nature of the acquisition. We have, accordingly added a clause to this effect in the section by which we amend section 24 of the Act and the Collector or judge making the award will find embraced in a single section the whole of the details required for the completion of his estimate of compensation." The recommendations were given effect to in sec. 23, sub-section (2) of the present Act.

Amendment in sub-sec. (1) clause first :—By sec. 7 of Act XXXVIII of 1923 the words "notification under section 4 sub-section (1)" have been substituted in place of the words "declaration relating thereto under section 6", in section 23, sub-sec. (1), clause, *first*.

Reasons for the amendment :—This amendment was found necessary by reason of introduction of the new section 5A by Act XXXVIII of 1923 by which any person interested in any land, which has been notified under section 4, sub-section (1) as being needed or likely to be needed for a public purpose or for a company, may within thirty days after the issue of the notification, object to the acquisition of the land, and every objection so made shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard and shall after hearing all such objections and after making such further enquiry, submit the case for the decision of the Local Government. The Local Government, if satisfied after considering the report, if any, of the Collector under section 5A, that any particular land is needed for a public purpose, or for a company, a declaration shall be made to the effect. Considerable time may elapse between the date of the publication of notice under section 4(1) and the publication of declaration under section 6 ; and the legislature intends that in case the objections made under section 5A be overruled by the Local Government the objector could not take advantage of the lapse of time which may have the effect of considerably enhancing the value of the land by reason of the improvement to be effected by the proposed acquisition.

Dates of notification under sec. 4(1) :—Where sometime after the publication of a notification under sec. 4(1) of the L. A. Act a second notification was issued on a later date which was wider than the first one, and embraced not only the land covered by it but more land of the claimant in addition and the earlier notification neither cancelled nor superseded, it was held that as regards the proceedings under the Act, the market value of the property must be taken as from the date of the first notification in respect of land covered by it and not as from the date of the subsequent notification. But where under the Works of Defence Act an earlier declaration was cancelled by a later one, it was held that it was the date of the second notification which must be taken into consideration as regards the market value of the property concerned, (a).

(a) *Collector, Hanthawaddy v. Sulaiman Adamjee*, 1941 Rang. L.R. 40 : A.I.R. (1941) Rang. 225 : 197 I.C. 595.

Difference between sec. 4 and sec. 6.—Sec. 4 refers to land in a particular locality while sec. 6 contemplates the particular land itself. While the land is needed or likely to be needed under sec. 4, sec. 6 demands predetermination that the land is finally needed. Only thereafter can a declaration issue under sec. 6, (b),

Object of sec 23.—The sovereign power of every State has authority to appropriate for purpose of public utility lands situate within the limits of its jurisdiction. This power is termed in the United States “*eminent domain*”—Wheaton’s International Law, 4th English Edition, section 163, p. 260. But it is not deemed politic to exercise the authority so as to interfere with security in the enjoyment of private property ; or to confiscate private property for public purposes without paying the owner its fair value. It is a well recognised canon of construction not to interpret an Act of the legislature in such a way as to take away property without compensation unless such intention is clearly expressed or is to be inferred by plain implication, (c).

The sub-clauses.—The intention of section 23 of the Land Acquisition Act taken as a whole is to provide a complete indemnity to a person whose land is compulsorily acquired. The sub-clauses give effect to this principle by enumerating the heads under which compensation may be awarded, (d). The principle upon which valuation of property compulsorily acquired should be measured has been laid down by the *House of Lords in Fraser v. City of Fraserville*, (e). *It is the value to the seller of the property in its actual condition at the time of expropriation with all its possibilities excluding every advantage due to carrying out of the scheme for the purpose for which the property is compulsorily acquired.* (f), When land is compulsorily acquired under the L. A. Act the value to be paid for is the value to the owner as it existed at the date of the taker and the value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined and therefore, the sum awarded should not exceed the amount which a prudent owner in the claimant’s position would have accepted, (g).

The general principles for determining compensation that are specified in sections 23 and 24 differ in no material respect from those upon which compensation was awarded in England under the Lands Clauses Act, 1845, before the coming into operation of the Land (Assessment of Compensation) Act of 1919. It is well settled that English decisions

(b) *Secretary of State v. Gopala Iyer*, 1930 Mad. 798 ; 59 M. L. J. 274.

(c) *Barrington’s Case*, (1610) 8 Rep. 138 ; *River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743 ; 47 L. J. Q. B. 193 ; *Western Counties Rail Co. v. Windson Annapolis Rail. Co.*, (1882) 7 App. Cas. 178 ; 51 L. J. P. C. 43 ; *Commissioner pf Public Works v. Logan*, (1903) A. C. 355 ; 72 L. J. P. C. 91.

(d) *Baroda Prosad Dey v. Secretary of State*, 49 C. 83 ; 25 C. W. N. 677.

(e) *Fraser v. City of Fraserville*, 1917 A. C. 194.

(f) *Lala Nursing Das v. Secretary of State*, 52 I. A. 133 ; 6 L. 69 (P. C.) ; 29 C. W. N. 822 (P. C.) ; (1925) A. I. R. 91 (P. C.).

(g) *The Collector of Nagpur v. P. C. Joglekar*, 29 N. L. R. 155 ; 146 I. C. 77.

under the Lands Clauses Act of 1845 lay down principles which are equally applicable to proceedings under the Indian Act. The compensation must be determined therefore, by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclinations of the vendor to part with the land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be regarded as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser. It is often the value of the land to the vendor that has to be estimated. This however is not strictly accurate. The land, for instance may have for the vendor, a sentimental value far in excess of its "market-value". But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as a vendor willing to sell at "the market price" to use the words of sec. 23 of the Act, (h).

Section 23 is not exhaustive.—Though the principle of providing a complete indemnity to person whose land is acquired by enumerating the heads under which compensation may be awarded there may be circumstances besides those mentioned in sub-clauses (i)-(vi) of sec. 23 (1) which may very well be taken into consideration in awarding compensation for the lands acquired. Section 23 is not exhaustive. It was held that though a claimant may not be entitled to any compensation for the loss of earning of a prospective business on the site acquired under section 23 (i)(vi) of the L. A. Act under the circumstances of the case he was entitled to a compensation by way of 6 p. c. return on the locked up capital over and above the value of the land and materials therein, (i).

The Constitution of India and Sn. 23.—Though in Art. 31 (2) or Entry of list III of the Constitution of India the word "compensation" is not qualified by the word "just", it has nevertheless been held by the Supreme Court that the very word "compensation" means a full and fair money equivalent of the property taken and any law which denies this must be held to be void, (j),

Therefore the Court can interfere when the provision for compensation is merely a subterfuge for confiscatory legislation. It is not open to legislatures to lay down any principles which may result in non-payment of any proper compensation. In *State of Bihar v. Kameswar Singh* (k) it was held that s. 4 (b) and s. 23 (f) of Bihar Land Reforms Act 1950 are void. The Court can interfere when the compensation is based on something which is unrelated to facts, (l), and also when the principles laid down is arbitrary e. g. when

(h) *Sri Raja Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam*, 66 I. A. 104 : 1939 I. L. R. (M) 532 : 1939 A. W. R. (P. C.) 82 : 50 L. W. 1 : 41 Bom. L. R. 725 : 43 C. W. N. 559 : 70 C. L. J. 511 : 1939 M. W. N. 708 : 20 Pat. L. T. 381 : (1939) 2 M. L. J. 45 : 18 I. C. 230 : 1939 A. I. R. (P. C.) 98.

(i) *L. A. Officer v. Jamnabai*, 47 Bom. L. R. 893.

(j) *State of West Bengal v. Bela Banerjee*, 1954 S. C. A. 41 (45).

(k) In *State of Bihar v. Kameswar Singh*, A. I. R. 1952 S. C. 252, where it was held that Sn. 23(f) of Bihar Land Reforms Act 1950 is void.

(l) *Gajapati v. State of Orissa*, A. I. R. 1953 S. C. 375 (381).

compensation payable for land acquired at any time under a permanent Act, was the market value of land on a particular date of year viz. 1946, no matter when the land was acquired, (m). But the introduction of Arts. 31A, and 31B, by the amendment of the Constitution has a far reaching effect. By virtue of Art. 31A no law is liable to attack on the ground for want of provision for compensation or that there is no public purpose (n), or even if it violates some other fundamental rights. Though the Article is confined to an "Estate" it is indeed derogatory to the principles laid down in Art. 31(2). What was granted by Art. 31(2) is taken away by Art. 31A. Articles 31A and 31B were questioned but upheld, (o). The proviso to Art. 31A states that the bill passed by a State Legislature is not a valid law till it receives the President's assent (o), where it was also held that the Art. 31A differed from Art. 31(4) in that the former is not limited to statutes pending in the legislature at the time of commencement of the Constitution; it exempts not only the application of Art. 31(2) but also any fundamental right. It is confined to 'Estate' only, it has no *non-obstante* clause as in Art 31(4), (p). The existence of public purpose is an implied and inherent factor in Art. 31(2) and is therefore a pre-requisite for any compulsory acquisition and is therefore justiciable. Art. 31A means only a modification of the proprietary right such as extinguishment of the right wholly. It is mere suspension of the right of management of an 'estate' for a definite or indefinite period. No question of compensation arises under Art 31A nor is a public purpose a condition precedent under Art. 31A and 31B, (q). Supreme Court in (r) held that the word 'Jagir' in 31A embraced military grants, maintenance grants, implied and express, as the object of Art. 31A was to abolish all intermediaries and absence of public purpose or compensation were no criteria for invoking Art 31A. Also see *Umeg Singh v. State of Bombay* (s). The Assam State Acquisition of Zamindaries Act, 1951 was held *intra-vires* (t).

Sn. 3 of the Punjab Village Common Lands (Regulation) Act of 1954 which provided vesting of *Shamlat deh* in Village Panchayat without payment of compensation was held valid, (u). Art. 31A therefore bears a judicial review of a law passed under the authority of any of the sub-clauses in Art 31(1) on the ground of contravening any fundamental right under Arts. 14, 19 or 31, but it may be argued that the law may be challenged if other mandatory provisions of the Constitution is violated, or if there

(m) *State of West Bengal v. Bela Benerjea*, (1954) S. C. A. 41 (46); *Jagveera v. State of Madras*, A. I. R. 1954 S. C. 257 (259).

(n) *Gangadhar Rao Narayan Rao Mazumdar v. State of Bombay*, A. I. R. 1955 Bom. 28.

(o) *Sankari Prosad Singh Deo v. Union of India*, 1951 S. C. J. 775; A. I. R. 1952 S. C. 89.

(p) *State of Bihar v. Kameswar*, A. I. R. 1952 S. C. 252.

(q) *Gopathy Narayan Deo v. State of Orissa*, A. I. R. 1953, Or. 155.

(r) *Amar Singhji v. State of Rajasthan*, A. I. R. 1955 S. C. 504.

(s) *Umeg Singh v. State of Bombay*, A. I. R. 1955 S. C. 540.

(t) *Bhairabendra Narayan Bhup v. State of Assam*, A. I. R. 1956 S. C. 503.

(u) *Atma Ram v. State of Punjab*, A. I. R. 1959, S. C. 519.

is no legislative capacity or colourable use of that power is made, or if there is no public purpose served by the acquisition. Further Art. 31A specially excludes operation of Art. 31 in cases specified in Art. 31-A, yet entry 42 of list III is not yet amended. So that if a law wanted to avoid said Entry 42 of list III, the law might be said to be a fraud on the Constitution.

In *Kochunis Case* (v), the Supreme Court has held in dealing with the validity of the Madras Maramukkathayam (Removal of Doubts) Act, 1955, (Madras Act 32 of 1955), that the said Act is *ultra vires* of Art 31 read with Art 19(1) (f), that it was a legislative device to take the property of one (the Sthance) and vest it in another (the members of Tarwad) without compensation, that it is expropriatory in character and was directly hit by Art. 19(1) (f) and was not at all saved by Art. 19(5), that object of the Constitution 4th Amendment was to bring a change in the agricultural economy and not recognise or confer any title in whole or part of an estate on junior members of a family (Tarwad), that Art. 31 only deals with an "estate" *qua* 'tenure' and does not enable the State to divest a proprietor of his estate to vest it in another without reference to any agrarian reform. It reiterated the opinion expressed in (w). The fundamental rights are sacrosanct and can be limited in their exercise only by the restriction envisaged in part III of the Constitution. The view expressed in (x) by the Supreme Court that the collection of taxes depriving the citizen's right to acquire or trade under Art. 19(1)(f) comes directly under Art. 265 and cannot be secured by Art. 31(1) and so no writ petition would lie, only a suit can lie, is no longer correct and good law in view of *Kochuni's Case*. The interpretation of the word 'law' in Art. 265 and the prohibition contained in Art. 13 that no 'law' shall offend any rights described in Part III, can only mean that even taxation can ultimately be the subject to the reasonable restriction clause in Art. 19(1)(f) & (g), since taxation affects holding of property and the right to occupation or trade, and a writ petition would lie.

It may be noted that where land is properly notified for a public purpose, subject to payment of compensation, under the Act, the plea of infringement of fundamental rights under Art. 19 or 31(2) of the Constitution is wholly unsubstantial, (y),

Writ petition.—Any grievance regarding the amount of compensation is to be settled by approaching the competent court and not by a writ petition, (y).

But when the land owners of the tenants were aggrieved by the delay, it is open to them to claim writ or order compelling the State Government to complete the assessment and payment of compensation. The appropriate Government will not be justified in allowing matter to drift

(v) *K. K. Kochuni and Others v. State of Kerala* A. I. R. 1960 S. C. 1080,

(w) *Deepchand's Case*, A. I. R. 1959 S. C. 648 and *Bashir Nath's Case*, A. I. R. 1959 S. C. 149.

(x) *Ranjilal v. I. T. O.* 1951 S. C. R. 127.

(y) *Ambalal v. Ahmedabad Municipal Corporation*, A. I. R. 1968 S. C. 1223.

and to take in hand proceedings for assessment whenever they think it proper after the issue of the notifications under sections 4 and 6 ; (y).

Writ petition is always maintainable for abridgment of any of the fundamental rights. Since Golaknath's case (z) decided on 27.2.67 there can be no further abridgment of fundamental rights by any new law other than those already existing in the 9th Schedule or otherwise on that date. The effect is that all laws dealing with acquisition and compensation thereon shall henceforth be based on Arts. 31, 31-A, 31-B as they originally stood. In other words both the principles and adequacy of compensation can be challenged. But it has been held that principles also cannot be challenged, (a), but it may be noted that effect of Golak Nath's case has not been considered.

Further the compensation, if allowed must be reasonable and not a solatium even though Art 31 (2) prohibits justifiability of the quantum, (b). The Supreme Court has held that a complete deprivation is also a restriction, but when that restriction reaches the stage of prohibition, special care has to be taken by the Court to see that the test of reasonableness is satisfied. Arts. 19, 21 and 31 are not in *pari materia* and they differ in scope and content so that *Subodh Gopal Bose's case* (c) is distinguished because that was in connection with a 'law' made under Art. 21 and it does not hold the field under Art 31 (1).

The Land Acquisition (Madras Amendment) Act XXIII of 1961 is void as it is hit by Art 14. (d).

Market value not defined in the Act.—The expression "market-value" contained in section 23, sub-sec. (1) clause 'first' has not been defined in the Act. The Select Committee gives the following reasons for not defining the expression, in the following terms ; "The section as drafted in the Bill, contained a definition of 'market-value' to which exception has been widely taken, as inapplicable to any part of the country, and when applicable, open to much objection. We agree with the Lieutenant Governor of the Punjab and the High Court of Bengal that no attempt should be made to define strictly the term in the Act, and that the price which a willing vendor might be expected to obtain in the market from a willing purchaser, should be left for the decision primarily of the Collector and ultimately of the Court". Again in para 14 of the further Report of the Select Committee dated 23rd March 1893 it is stated : "We have again considered the question of definition of the term 'market value' but we adhere to the opinion of our Preliminary Report that it is preferable to leave the terms undefined. No material difficulty has arisen in the interpretation of it ; the decisions of several High Courts are at one in giving it the reasonable meaning of the price a willing buyer would give to a willing seller ;

(z) *C. Golaknath v. State of Punjab*, A. I. R. 1967 S. C. 1643 : (1967) 2 S. C. R. 762.

(a) *State of Gujarat v. Shantilal*, A. I. R. 1969 S. C. 634.

(b) *Namasivaya v. State of Madras*, A. I. R. 1959 Madras 548 ; *Narendra Kumar and Others v. The Union of India*, A. I. R. 1960 S. C. 430.

(c) *State of West Bengal v. Subodh Gopal*, A. I. R. 1950 S. C. 27.

(d) *P. Vajravelu v. Special Dy. Collector*, (1964) 2 S. C. J. 703.

but the introduction of a specific definition would sow the field for a fresh harvest of decisions ; and no definition could lay down for universal guidance in the widely divergent conditions of India any further rule by which that price should be ascertained”.

Real value—Portuguese Law.—In Portuguese Law No. 2030 D/22-6-1948-s.10, “It is provided in s.10 that the just compensation shall be determined on the basis of the ‘real value’ of the acquired property. The expression “just compensation” could be compensation which is fair to both parties and favourable to neither. It is settled principle that there can be no taking away of private property without payment of compensation. Expression under s. 23 of Land Acquisition Act of 1894 is “market value” while the expression under sec. 10 of the Portuguese Law is “real value”. Hence the court can take the potentialities of the property into consideration while determining the “just compensation” and that it is not bound to determine that compensation only on the basis of the income of the property on the date of acquisition. S. 607 of the Portuguese Civil P. C. is not applicable to proceeding for compulsory acquisition for public utility. (e).

“Market-Value” as defined by the High Courts in India:—Calcutta— Apart from the compensation to which claimant in any particular case may be entitled on other heads, the compensation to be awarded for the land acquired is under section 23, cl. (I) of Act 1894, the market-value of the land at the date of the publication of the declaration [now of notice under section 4 (1)]. But the meaning attached to the term “market-value” is not defined in the Act nor is any concise statement of it to be found in any judicial decision in this country. The definition of “market-value” of a property as laid down by the American Courts in condemnation (i. e. acquisition) proceedings is “the price which it will bring when it is offered for sale by one who desires, but is not obligated to sell, and is bought by one who is under no necessity of having it.” (f). The “market-value” of land may be roughly described as the price that the owner willing, and not obliged to sell, might reasonably expect to obtain from willing purchaser with whom he was bargaining for the sale and purchase of the land, (g). There is no difference between the terms “value to the owner,” as used in the Land Clauses Act in England and the expression “market-value” as used in sec. 23 of the L.A. Act, (h).

(e) *The Comunidade de Aquem v. The State*, A. I. R. 1969 Goa 1.

(f) *Stewart v. Ohio Pac. R. R. Co.* 38 W. Va. 432 : 18 S. E. 604. *Lewis on Eminent Domain*, 2nd Ed. S. 478 ; *Pittsburgh etc. Railway Co. v. Vance*, 115 Pa. St. 325 : 8 Atl. 764 ; *R. H. Wernicke v. Secretary of State*, 13 C. W. N. 1046 : 2 I. C. 562.

(g) *Kailash Chandra Mitra v. Secretary of State*, 17 C. L. J. 34. *Giris Chandra Roy Chowdhury v. Secretary of State*, 24 C. W. N. 184 : 31 C. L. J. 63 : 55 I. C. 150 ; *Mohini Mohan Banerjee v. Secretary of State*, 25 C. W. N. 1002 ; 34 C. L. J. 188 ; *Tulsi Makhania v. Secretary of State*, 11 C. L. J. 408 ; *Sadhu Charan Roy Choudhury v. Secretary of State*, 31 C. L. J. 63.

(h) *Swarna Manjuri Dassi v. Secretary of State*, 55 Cal. 994 : 32 C. W. N. 421 ; 49 C. L. J. 54 : 112 I. C. 706 ; 1928 A. I. R. (Cal.) 522.

Bombay :—By “Market-value” is meant the price which would be obtainable in the market for that concrete piece of land acquired with its particular advantages and particular drawbacks, both advantages and drawbacks being estimated rather with reference to commercial value than with reference to any abstract legal right, (i). The expression “market-value” as used in section 23 of the L. A. Act (1894) means the value which a parcel of land would realise if sold in the market. The seller must be a willing seller, a forced sale affords no criterion of market value. The purchaser also must be a willing purchaser, and further, he must be a prudent purchaser, that is, one who makes his offer after making necessary enquiries as to the value of the lands ; an offer made by one who knows nothing of the value of the land in the locality and who makes no enquiries about it affords no test of market-value. The market-value is the value that can be realised on a sale in the open market. The market may be dull or brisk. But whether it be dull or brisk it cannot be excluded from consideration, (j). In determining the amount of compensation payable in respect of piece of land which is being compulsorily acquired, the Court must consider what a willing purchaser would have given for the land on or about the date of the notification for acquisition, (k).

Patna.—The principle laid down in the L. A. Act is that the Court has to ascertain what the “market-value” of the land is, that is to say, what value would be paid in the market by purchaser of good ability and well qualified to put the land to the best advantage (l).

Oudh.—“Market-value” means the prices that would be paid by a willing buyer to a willing seller, when both are actuated by business principles prevalent at the time that the transaction takes place in the locality in which it takes place (m). The only proper method for determination of the market value of the property is the capitalisation of the net annual profits and the fair market-value of the property acquired should not exceed twenty times the net annual profits, (n). The market-value which under the provisions of sec. 23 should be given is the potential value of the property at the time of acquisition which would be paid by a willing buyer to a willing seller when both are actuated by business principles prevalent in the locality at that time, (o).

Sind.—The “market-value” of the land may be roughly described as the price that an owner who is willing but who is not obliged to sell the land might consistently with reason, expect to get from

(i) *Bombay Improvement Trust v. Jalbhoj*, 33 B. 483 : *Collector of Belgaum v. Bhima Rao*, 10 Bom. L. R. 657 : 11 Bom. L. R. 674.

(j) *Government of Bombay v. Mondigar Aga*, 48 B. 190 : 25 Bom. L. R. 1182.

(k) *The Collector v. Manager, Kurla Estate*, 28 Bom. L. R. 67 : 93 I. C. 142 : 1926 A. I. R. (B) 223.

(l) *Birbar Narayan Chandra v. Collector of Cuttack*, 2 P. L. J. 147 : 39 I. C. 14.

(m) *Birjani v. Deputy Commissioner, Sitapur*, 28 O. C. 89 : 57 I. C. 301.

(n) *Sheo Nath Misra v. U. P. Govt.* (1961) 59 A. L. J. 340.

(o) *Ali Qader v. Secy. of State*, 7 O. W. N. 392 : 121 I. C. 898 : 1930 A. I. R. (O) 223.

a willing purchaser with whom he is bargaining for the sale and purchase of the land, (p).

Rangoon.—The “market-value” of land may be roughly described as the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and the purchase of the land. The value of land to an owner can only be tested by what he would get for it if he was willing to sell and not compelled to sell, and there is no intention, either under the English or the Indian Act to compensate him for any attachment by reason of sentiment or family association, (q).

Madras.—In (r) it has been held that in all valuations judicial or otherwise, there must be room for interference and inclinations of opinion which being more or less conjectural are difficult to be reduced to exact reasonings. Certain methods of valuation as accepted by judicial decisions are : (1) price paid within a reasonable time for the land, (2) rents and profits of land received shortly before acquisition, (3) price paid for adjacent lands possessing similar advantages, (4) the opinion of experts.

Mysore.—In (s) it has been held that sharp rise of prices of lands in Bangalore after world war II must be taken into consideration.

Privy Council.—Their Lordships of the Judicial Committee defining “Market value” have said “It is perhaps desirable in this connection to say something about the expression “the market price”. There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market, In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past in land of similar quality and in similar position and this is what must be meant in general by “the market value”.

Interference by Supreme Court.—The Supreme Court has laid down the broad principle that in an appeal from award granting compensation, the Supreme Court will not interfere unless there is something to show that on balance of evidence it was possible to reach a different conclusion as also that the judgment cannot be supported because of wrong application of principle or because some important point affecting valuation has been overlooked or misapplied, (u).

Market value at the date of the publication of notification under sec. 4 :
—It is important to bear in mind that the market value of the land acquired is to be determined as it was at the time of the publication of notification

(p) *Khusiram v. Asst. Collector of Shikarpur*, 17 S. L. R. 22 : 1925 A. I. R. (S) 112.

(q) *Reddier v. Secretary of State*, 5 Rangoon 299 : 109 I. C. 11 : 1928 A. I. R. (R) 65.

(r) *Vilayutham Chettiar v. Special Tahsildar*, (1959) 1 M. L. J. 348.

(s) *Adinarayan Chetty v. Spl. Acquisition Officer, Bangalore*, A. I. R. 1954 Mys. 71 : I. L. R. 1954 Mys. 312.

(t) *Sri Raja Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam*, supra 43 C. W. N. 559.

(u) *Special Land Acquisition Officer, Bangalore v. Adinarayana Chetty*, A. I. R. 1959 S. C. 429.

under section 4 of the Act. The principle of compensation is indemnity to the owner, and the basis on which all compensation for lands required or taken should be assessed is the value to the owner at the date of notice to treat in England and *the date of the publication of notice* under section 4(1) of the L. A. Act 1 of 1894 in India and not their value when taken, though under Act X of 1870, by sections 13 and 24, the market-value of the land at the time of awarding compensation had to be taken into consideration. Time when the land was acquired was the time for ascertaining its value, (v).

Before amendment of section 23(1) by section 7 of Act XXXVIII of 1923 the Court was to "take into consideration the market value of the land at the date of the publication of the declaration relating thereto under section 6", (w). It has further been held that "the date of the second declaration was to be taken for the purpose of ascertaining the market value if there were two declarations relating thereto, the former one being cancelled by the latter." The primary consideration in determining the amount of compensation to be awarded in L. A. proceedings is, as laid down in section 23(1) of the L. A. Act, "the market-value of the land at the date of the publication of the notification." The decision of the Privy Council in (x) has not modified the law in this respect, (x-1). The question is not what the person who takes the land will gain by taking it, but what the person from whom it is taken will lose by having it taken from him. Cockburn C. J. says in his judgment that, "When Parliament gives compulsory powers and provides that compensation shall be made to the person from whom property is taken for the loss he sustains, it is intended that he shall be compensated to the extent of his loss, and that his loss shall be tested by what was the value of the thing to him, not by what will be its value to the person acquiring it," (x-2).

In India, it has been held that in "calculating the amount of compensation to be awarded for land compulsorily acquired by Government it is not permissible to a judge to take the amount which the claimant had expended in the purchase and improvement of the land, as if it had been invested on loan since the date of such expenditure at the prevailing rate of interest and to treat the total amount so arrived at as the market-value of the land," (x-3). Upon a compulsory acquisition the seller is entitled to the value to him of property in its actual condition at the time of expropriation with all its advantages and with all its possibilities excluding any advantage due to the carrying out of the scheme for the purpose of which the property is com-

(v) *Manmatha Nath Mitter v. Secretary of State*, I. C. W. N. 698.

(w) *Masin v. The Collector of Rangoon*, 7 Rang. 227 (P. C.) : 33 C. W. N. 612 : 49 C. L. J. 523 : 116 I. C. 599 : 1929 A. I. R. (P. C.) 126.

(x) *Nursing Das v. Secretary of State*, 6 L. 69 : 29 C. W. N. 822 (P. C.) : 1925 A. I. R. (P. C.) 91.

(x-1) *Reddiar v. Secretary of State*, 5 Rang. 799 : 109 I. C. I. : (1928) A. I. R. (R) 65.

(x-2) *Stebbing's Case*, (1870) L. R. 6 Q. B. 37.

(x-3) *Secretary of State v. Kartic Chunder Ghosh*, 9 C. W. N. 655,

pulsorily acquired, (y). The value of the land should be found out irrespective of the question how it is held. The land may be held by a permanent lessee with the result that neither the landlord nor the lessee alone represents the whole estate. In such circumstances, the landlord or the lessee alone may not possess the absolute right to dispose of the entire body of interests in the land. But that is no reason why the compensation to be awarded for the same land should be different in different circumstances. If a land is worth, say Rs. 2,000 in open market its value would remain Rs. 2000 whether the landlord holds it in his own possession without encumbrances or whether he has left permanently to some people. What, therefore, has to be done is first, to find out what is the market value of the land itself, irrespective of any consideration as to how it is held. The next step would be to apportion the value among several parties holding separate and distinct interests in the land. If, for example, there be 4 co-owners and no tenant, the value would be divided equally among the 4 co-owners. If there be, say a landlord and a tenant, the value will have to be apportioned between the two according to their respective interests, (z).

The basis for determination of market value :—“The basis for determination of the market value of land” within sec. 23(1) (i) of the L. A. Act is the value of the land to the owner. But the value to the owner must be judged by an objective and not by a subjective standard. Ordinarily the objective standard would be the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser. The property must be valued not only with reference to its condition at the time of the declaration excluding any advantage due to the carrying out of the scheme for which the land is compulsory acquired. The value of land to the owner may also be determined by capitalising the rent. The rent which owner was actually receiving at the relevant point of time may be taken to be the amount of annual rent to be capitalised ; but such rent is not conclusive on the point. Any other figure which the court may consider to be fair rent for the land in question may be taken to be such amount. If the land is likely to continue to produce the same rent which is being paid for it, that rent does offer the basis on which the value is to be capitalised. It is necessary that one should be certain that the rent is likely to continue undiminished. One of the tests would be whether the rent that is being paid is a fair local rate at the time and not a fancy rent, (a).

Modification of sec. 23(1)(i) by Local Acts :—Market-value of land acquired under the U. P. Town Improvement Act :—The correct interpretation of sec. 23, sub-sec. cl. (i) of the L. A. Act as amended by para (10), cl. (3)

(y) *N. H. Mirchandani v. Special L. A. Officer, Karachi*, 101 I.C. 269 : 1927 A. I. R. (S) 168. *Atmaram v. The Collector of Nagpur*, 33 C. W. N. 458, (P. C.) ; *Choithram Begraj v. Secretary of State*, 25 S. L. R. 285 : 131 I. C. 222 : 1931 A.I.R. (S) 52 ; *Secretary of State v. Sukkur Municipality*, 131 I. C. 178 : 1931 A.I.R. (S) 67.

(z) *Raja of Pittapuram v. Revenue Divisional Officer, Coconada*, 42 M. 644 : 51 I. C. 656 : 36 M. L. J. 455 ; *Rohan Lal v. Collector of Etah*, 51 All. 765 : 1929, A. L. J. 522 : (1929) A. I. R. (A) 525.

(a) *The Province of Bengal v. Uma Charan Law*, 48 C. W. N. 609,

of the schedule to the U. P. Town Improvement Act (8 of 1919) is that the "market-value" of the land to be acquired is to be calculated exclusively in accordance with the use to which the land is being put on the date on which notice issued under sec. 29 or sec. 36 of the U. P. Town Improvement Act ; and where on such date the land so acquired is not being put to any use its market-value may be nil, (b). The view taken by the Allahabad Full Bench in *Secretary State v. Makhan Das* (b), that no compensation is payable for such land as it is not being put to any "use" because the owner is not deriving any benefit therefrom, has been held to be erroneous and over-ruled by the Privy Council, (c).

The only proper method for determination of the market value of the property is capitalisation of the net annual profits and the fair market value of the property acquired should not exceed twenty times the annual net profit, (d).

Market-value of land acquired under the Bombay City Municipal Act III of 1888 :—Where in a case of set-back, land with building thereon was taken up by the Municipal Commissioner from a private owner under Act III of 1888, (sections 298, 299, 301) it was held that the amount of compensation awarded to the owner should be calculated with regard to the price given within a few years previously for land of a similar character in the immediate neighbourhood of the land in question, (e). A certain mosque in Bombay was abutted on the north west and east by public streets. In December, 1886, the Municipal Commissioner, pursuant to section 166 of the Bombay Municipal Acts III of 1872 and IV of 1878, required the trustees of the mosque to set back the building on the said three sides for the purpose of improving the public streets. It was contended that the amount of compensation to be paid to the trustees was to be measured by the loss of rent which they would have received for certain rooms which they had proposed to build on the land in question ; it was held that the words of section 163 of the Municipal Acts III of 1872 and IV of 1878 were intended to ensure compensation to the owner for every sort of damage, and not to restrict it to compensation for such damage as he might by his own arrangement reduce it to.

Compensation becomes due under the section as soon as the Corporation takes possession, which is when the owner begins to build, and there being no words in the section to show a contrary intention, the compensation must be assessed according to the state of things then existing, and not upon the basis of what the owner may have it in his power to do towards diminishing the damage which would otherwise result to him, (f).

Market-value to be determined in the aggregate :—What has to be acquired in every case under the L. A. Act is the aggregate of rights in the

(b) *Secretary of State v. Makhan Das*, 50 All. 470 (F. B.) : 26 A. L. J. 69 : 107 I. C. 587 : 1928 A. I. R. (A) 147.

(c) *Kailash Chandra v. Secretary of State*, 50 C. W. N. 663.

(d) *Sheonath Misra v. U. P. Govt.* (1961) 59 A. L. J. 340 : 66 C.W.N. xxiv.

(e) *Municipal Commissioner for the City of Bombay v. Syed Abdul Huq.* 18 B, 184.

(f) *Municipal Commissioner for the City of Bombay v. Patel Haji Mohamed*, 14 B, 292.

land and not merely some subsidiary rights such as that of a tenant, (g), in which Jenkins C. J. observed* : "The Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it." In (h), it is observed : "Reading the Act as a whole I can come to no other conclusion than that it contemplated the award of compensation in this way : First you ascertain the market-value of the land on the footing that all separate interests combined to sell, and then you apportion or distribute that sum among the various persons found to be interested." The Land Acquisition Act does not lay down any hard and fast rule as to the mode of valuation ; the Court may either value the land including all interests therein and then apportion the amount between several interests or value the interests separately and ascertain the total by addition. The market-value referred to in section 23 of the L. A. Act means the market-value of the concrete piece of land to which the notification under section 4 of the Act applies and not separate interests in it. The normal method is to take the market-value of the land and then to apportion that amongst the different interests ; but the Act does not lay down any hard and fast rule and in special cases it may be desirable to adopt a different method by valuing separately each interest in the land, (i).

Two methods of valuation and apportionment have been approved : (1) value of the interests—the lessors' or the lessee's and deduct it from the total valuation and award the remainder for the other interests ; and (2) value both the interests. In general the first method may fairly be applied where one only of the two interests can conveniently and reasonably be valued, while the other can not, (j). The second method based on the rule of proportion ought to be employed where both the interests can conveniently and reasonably be valued with a fair or fairly equal amount of certainty.

The antithesis between "land" and "an interest in land" is well marked in sec. 31(3). The distinction is preserved throughout the Act where land is always used to denote the physical object, which is, after all, the thing that has to be acquired. Provision is made for compensation to all persons interested but claims on this head are to be adjusted in the apportionment prescribed under sections 29 and 30 and do not fall to be considered till after the Court has determined the market value of the land under sec. 23(1). The value of the land cannot and ought not to be determined independently of the huts standing thereon, (k).

The method of valuation contemplated by the L. A. Act is that the court should first ascertain the market-value of the land as if all separate interests are combined. It should then apportion that value among the persons

(g) *Babujan v. Secy. of State*, 4 C. L. J. 256 : *Raja Shyam Chandra v. Secy. of State*, 12 C. W. N. 569 : 7 C. L. J. 445 ; **The Collector of Belgaum v. Bhimroo*, (1980) 10 Bom. L. R. 657.

(h) *Bombay Improvement Trust v. Jalbhoy*, 33 Bom. 483.

(i) *Government of Bombay v. Century Spinning and Manufacturing Company*, I. L. R. (1942) Bom. 403 : 44 Bom. L. R. 57 ; 200, I. C. 661 : A. I. R. (1942) Bom. 105.

(j) *Santosh Kumar Dhar v. Nanda Kishore Mallick*, A. I. R. 1958 Cal. 56.

(k) *Secretary of State v. Belchambers*, 3 C. L. J. 169.

interested, (l). Where there is one holding, there cannot be piecemeal acquisition as the L. A. Act refers only to one notice, one proceeding and one award to be given and made regarding one holding and one ownership, (m).

This view, however, has not always been accepted in practice, and the procedure adopted in the case of *Girish Chandra Roy Chowdhury v. Secretary of State* (n), has been followed as a matter of convenience namely, that the market-value of the interests claimed by persons who held interests of different degrees in the property acquired has been determined successively and independently of each other.

The methods of valuation of land acquired under Act I of 1894 may be classified under three heads : (1) the opinion of valuers or experts, (2) the price paid within a reasonable time in *bona fide* transactions of purchase of the lands acquired or the lands adjacent to the land acquired and possessing similar advantages and (3) a number of years' purchase of the actual or immediate prospective profit from the lands acquired. It is generally necessary to take two or all of these methods in order to arrive at a fairly correct valuation. Exact valuation is practically impossible, the approximate market-value is all that can be arrived at, (o).

Compensation payable for land acquired by Government cannot be ascertained with mathematical accuracy. The Court has to see whether the evidence adduced displaces the amount awarded by the Collector. The valuation of the Collector is not displaced by evidence of value given by the claimant which is so exaggerated and reckless that no reliance could be placed thereon, (p).

The Supreme Court has approved the aforesaid three methods of valuation in *Special Land Acquisition Officer, Bangalore v. Adinarayan Setty*, (q).

The recognised modes of ascertaining the value of the land for the purpose of determining the amount of compensation to be allowed under the L. A. Act were : (1) if a part or parts of the land taken up has or have been previously sold, such sales are taken as fair basis upon which making all proper allowances for situation etc., to determine the value of that taken, (2) to ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property, (3) to find out the prices at which lands in the vicinity have been sold and purchased and making all due allowances for situation, to deduce from such sales the price which the land in question will

(l) *L. A. Officer v. Fakir Mahomed*, 143 I. C. 699 : 1933 A. I. R. (S) 124.

(m) *R. C. Sen v. Trustees for the Improvement of Calcutta*, 48 Cal. 893 : 33 C. L. J. 509 : 64 I. C. 577.

(n) *Girish Chandra Roy Chowdhury v. Secretary of State*, 24 C. W. N. 194.

(o) *Harish Chandra Neogy v. Secretary of State*, 11 C. W. N. 875 ; *Amrita Lal Basak v. Secretary of State*, 22 I. C. 78 ; *Karachi Municipality v. Narain Das*, 145 I. C. 795 : 1933 A. I. R. (S) 57.

(p) *F. W. Higgins v. Secretary of State*, 22 C. W. N. 659 : 46 I. C. 221.

(q) *Special Land Acquisition Collector, Bangalore v. Adinarayan Setty*, A. I. R. 1959 S. C. 429 : 1959 S. C. J. 431.

probably fetch if offered to the public, (r). In determining the market value of the land the Court has to consider (1) the price paid within a reasonable time for the land itself, (2) the rents and profits of the land received shortly before the acquisition, (3) the prices paid for adjacent lands possessing similar advantages and (4) the opinion of the experts or valuers, (s).

Re-settlement of Displaced Persons (Land Acquisition) Act 1948, s. 7(1)(e) proviso is *ultra vires* :—The above Act provides that the compensation has to be determined on the market-value of the land on the date of publication of notice under the section or on 1.9. 1939 with an addition of 40% whichever is less and further provided that in case the land is held under a purchase made between 1.9. 1939 and 1.4. 1948, the compensation shall be the price actually paid by the purchaser.

Held, that the proviso thus prohibit compensation being given on the basis of the market value on the date of the notification and so *ultra vires* section 299(2) of the Government of India Act, 1935. The said proviso being void *ab-initio*, they are not "existing laws" within meaning of Art. 366(10) of the Constitution, and so they are not saved by Art. 31(5) or 31A of the Constitution, (t).

West Bengal Land (Requisition and Acquisition Act (II of 1948) as amended by Act VII of 1951, Act VIII of 1954 and Act XII of 1957) :—*Validity of second proviso to s. 7(1) of the Act of 1948 :—*It was held following (unreported judgment of P. N. Mukherjee and P. K. Sarkar, JJ. in F. As. 18 and 19 of 1953), (u), that the second proviso to Sn. 7(1) of West Bengal Act II of 1948 providing inter-alia that "if the market value on the date of publication of notice under sub-section (1) of s. 4 exceeds by any amount the market value of land on 31st December, 1946, the amount of such excess shall not be taken into consideration," was beyond the competence of the West Bengal Legislature to enact, falling as it did within mischief of s. 299(2) of the Government of India Act, 1935 and therefore, void and of no effect. It was no part of the "existing law", namely W. B. Act II of 1948, when the Constitution came into operation and therefore, not saved by Art. 31(5) of the Constitution, (v). On 30-3-54 the offending provision was omitted by an Amending Act being W. B. Act VIII of 1954; and so the said proviso to Sn. 7(1) of W. B. Act, 1948 was void from its very inception and upheld the valuation of land on the basis of market value as on the date of publication of notice and not as on 31-12-46, (w).

(r) *In Re. Munji Khetsey*, 15 B. 229; *N. H. Mirchandani v. Special L. A. Officer, Karachi*, 110 I. C. 269, 1927 A. I. R. (Sind.) 168.

(s) *L. A. Officer v. Fakir Mahomed*, 143 I. C. 699; 1933 A. I. R. (S) 124; *Special L. Acquisition Officer v. Assudomal*, 1938 A. I. R. (S) 225.

(t) *Mangal Sen v. Union of India*, A. I. R. 1970 Delhi 44. followed *Bela Banerjee's case* A.I.R. 1954, S.C. 170. *N. B. Jeejeebhoy v. Assistant Collector, Thana*, A.I.R. 1965 S.C. 1096; *Union of India v. Kamalabai Harjivandas Parekh*, A.I.R. 1968 S.C. 377.

(u) *State of West Bengal v. Murari Mohan* (unreported). F. As. 18 & 19 of 1953.

(v) *State of West Bengal v. Bonbihari Mondal*, I. L. R. (1960) I Cal. 824.

(w) *State of W. B. v. Bela Banerjee* (1954) S. C. A. 41 (46); *Bhikaji Narain v. Madhya Pradesh* (1956) S. C. A. 17; A. I. R. (1955) S. C. 78 distinguished, *Keshavan v. The State of Bombay*, (1951) I I. S. C. R. 228, *Purshottam Govindji v. Halai*, A. I. R. (1956) S. C. 20, referred to.

Madras Land Reforms (Fixation of Ceiling on Land) Act, (No. 58) 1961 :—The Supreme Court has held following *Karimbil Kunhi Koman v. State of Kerala*, (x). that sections 5 and 50 of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961, are violative of fundamental rights enshrined in Article 14 of the Constitution and are therefore unconstitutional. As these sections are the privotal provisions of the Act, the whole Act must be struck down as unconstitutional. In the aforesaid Madras Act under Sn. 3, family in relation to a person means the person, the wife or husband, as the case may be, of such person and his or her—(i) minor sons and unmarried daughters ; and (ii) minor grandsons and unmarried grand daughters in the male line, whose father and mother are dead,” (y).

It was held that there is discriminatory treatment writ large between the sons *inter se* and between different classes of natural families as also in Sn. 50 of the said Act, provision has been made for progressive cut in the total compensation payable, just as in principle, was the case in the Kerala Act and which has already been declared *ultra vires* in *Karimbil Kunhikoman's* case and which accordingly is also *ultra vires* as being violative of the Art. 14 of the Constitution.

Illusory compensation—Land Acquisition (Madras Amendment) Act XXIII of 1961 :—

In P. Vajravelu v. Spl. Dy. Collector, Madras (z). The Supreme Court held—(1) Article 31-A of the Constitution would apply only to a law made for acquisition by the State of any “estate” or any right therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is concerned with agrarian reforms.

(2) The Land Acquisition (Madras Amendment) Act XXIII of 1961 provides for acquisition for any housing scheme, whether for slum clearance or for creating modern suburbs or for any other public purpose and not confined to any agrarian reform and therefore does not attract Art. 31-A of the Constitution.

(3) Neither the principles prescribing the “just equivalent” nor the just equivalent can be questioned by the court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles. If the compensation is illusory or if the principles prescribed are irrelevant to the value of the property at or about the time for acquisition, it can be said that the Legislature committed a fraud on power, and, therefore the law is bad. It is a use of the protection of Art. 31 in a manner which the Article hardly intended. If the question pertains to the adequacy of compensation, it is not justiciable ; if the compensation fixed on the principles evolved for fixing it, disclose that the legislature made the law in fraud of its powers, the question is within the jurisdiction of the Court, so The Land Acquisition (Madras Amendment) Act XXIII of 1961 does not offend Art. 31(2) of the Constitution. But it may be noted that this part of the observation

(x) *Karimbil Kunhi Koman v. State of Kerala*, (1962) Suppl. 1. S. C. R. 829.

(y) *Krishnaswami Naidu v. State of Madras*, 1964 (II) S. C. A. 732.

(z) *P. Vajravelu Mudaliar v. Special Dy. Collector, Madras*, (1964) 2 S. C. J. 703 : (1964) 2 M. L. J. 163 : A. I. R. 1965 S. C. 1017 : 1965 (1) S. C. R. 614 : 1965(1) S. C. A. 396.

has been held to be *obiter* by the Supreme Court in *State of Gujarat v. Shantilal (a)*, although these observations were necessary for negating the contention raised, on facts. Supposing the above contention was proved from facts, then surely the above observations would not have been *obiter*.

(4) The amending Act empowers the state to acquire land for housing schemes at a price lower than that the State has to pay if the same was acquired under the principal Act (Land Acquisition Act 1 of 1894). Discrimination is writ large and it clearly infringe Art. 14 of the Constitution and is clearly void.

Transfer of territories to foreign State and rights of inhabitants to compensation :—In the case known as *Berubari Case (b)*, the facts were that in 1958 there was an agreement between Indian Union and Pakistan known as Nehru-Noon Agreement, to the effect that the Berubari Union is to be divided into two, one of which was to go over to Pakistan. A controversy arose as to whether any legislation or constitutional amendment was necessary to implement the said agreement. This led to a reference under Art. 143(1) of the Constitution to the Supreme Court on the question and which held in *re-Berubari Union and Exchange of Enclaves (c)*, that the Agreement in question involved of a cession of a part of the territory of India in favour of Pakistan and that this could be effected only by an amendment of the Constitution under Art. 368 and not by a mere Agreement. Parliament accordingly enacted the Constitution (Ninth Amendment) Act 1960. This entailed demarcation of the area. This was also challenged in Supreme Court (c), but the Supreme Court dismissed the appeal. In the present case question arose inter-alia whether the power to implement a treaty over-rides Fundamental Rights, whether cession *per se* is an exception to the obligation to pay compensation. It has been held by D. Basu J. in the present case that (i) A plea of 'act of State' or 'reasons of State' is not available to a State against its own residents before its Municipal Courts, (ii) Even the maxim "*Salus populi suprema les*" is not applicable to the instant case because it is a case of voluntary gift of territory to a foreign State, not a capitulation to a superior force at action, (iii) there cannot be any logic for refusing to distribute the burden of the loss over the entire community where the Union of India chooses to make a deliberate gift to foreign State in a time of peace only to buy the goodwill of that State. The promotion of international peace and security is the political and moral obligation of the State in India under Art. 51 of the Constitution. (iv) But this does not absolve the State from complying with the fundamental rights, which constitute a legal fetter upon the powers of execution. (v) where a State cedes its territory to another, there has been no implied abrogation of Art. 31(2) by the mere passing of the Ninth Amendment Act ; (vi) The Union of India is in substance taking the property of the petitioner

(a) *The State of Gujarat v. Shantilal*, A. I. R. 1969 S. C. 634.

(b) *Sudhangshu Mazumdar v. Union of India*, 72 C. W. N. 349.

(c) *Re. Berubari Union and Exchange of Enclaves*, 1960 (3) S. C. R. 250 : A. I. R. 1960 S. C. 845. *Ram Kishore v. Union of India*, A. I. R. 1966 S. C. 644 : (1966) 1 S. C. R. 430 affirming A.I.R 1959 Cal. 506 : 63 C.W.N. 485, *Nirmal Bose v. Union of India* and affirmed by A.I.R. 1969 S.C. 783, *Maganbhai v. Union*.

to give it to Pakistan, which is a public purpose, (vii) Accordingly the Union of India or the State cannot be allowed to carry on impugned acts, such as demarcation etc., (viii) the cession of own territories under Art. 32(2) involves compulsory acquisition of those properties by Union of India within meaning of Art. 31(2), accordingly the respondents cannot be allowed to demarcate etc., until a law is made by competent legislature to provide for compensation for properties so acquired.

But recently the Supreme Court in appeal held that owners of land which is given to another foreign State, are not entitled to compensation, (c-1).

Assam Acquisition for Flood Control and Prevention of Erosion Act (VI of 1955) and Act XXI of 1960 *ultra vires* :—Assam Act No. VI of 1955 is not a law concerning agrarian reform and is not protected by Art. 31-A of the Constitution. The Act is an expropriatory measure. It provides for acquisition of lands both urban and agricultural for executing works in connection with flood control or prevention of erosion. There is unjust discrimination between owners of land similarly situated by the mere accident, some land being required for purposes mentioned in the Act VI of 1955 and some land required for other purposes. The said act is thus violative of Art. 14 of the Constitution. Sections 1 to 6 do not ensure the adequate compensation to be paid. So it violates Art. 31(2) of the Constitution as it stood prior to Constitution 4th Amendment Act, the Assam Act XXI of 1960 being entirely dependent on the earlier Act (VI of 1955) has no legal existence, (c-2).

Claim of additional compensation under s. 23(3) and scope of enquiry under s. 18 and s. 49 :—When a part of a house is acquired but the owner expressed a desire for acquisition of the whole house, the procedure prescribed in s. 49 has to be followed. This procedure is distinct and separate from the procedure which has to be followed in making a reference under s. 18 and he has to make an application some time before the award is actually made. If the owners have not taken any steps to express their desire that whole of their house should be acquired, it was not open to High Court to allow them to raise this point in appeal which arose out of an order passed by District Judge under s. 18. The claim was made by owner respondent under s. 23 of the Act and not under s. 49 and what they have in fact done is to claim additional compensation under s. 23(1). It is clear that the scope of enquiry under s. 18(1) is specifically indicated by the section itself. The Court can not consider the pleas raised by the owners under s. 49 in an enquiry under s. 18(1), (d).

Modes of estimating the market-value

1. **Sales to prove market-value :—**The best evidence to prove what a willing purchaser would pay for the land under acquisition would be the evidence of genuine sales effected about the time of the notification for acquisition either in respect of the land or any portion thereof or the sale of

(c-1) *Union of India v. Sudhangsu Mazumdar*, A. I. R. 1971 S.C. 1594 (Aug).

(c-2) *Dy. Commissioner, Kamrup v. Durganath*, A. I. R. 1968 S. C. 394.

(d) *State of Bihar v. Kundan Singh* (1964) 3 S. C. R. 382.

lands precisely parallel in all its circumstances to the land under compulsory acquisition (e). The market-value of the acquired land is ascertained from recent sales in the same or in the adjoining localities and from the average rental of these and similar lands in the vicinity, (f).

In order to ascertain the market-value of property at a certain time it is an *indicium* and a valuable *indicium* as to the value of the property to ascertain what prices have been recently obtained for lands more or less similarly situated in the same neighbourhood.

But the circumstances in each case under which the purchases are made must be borne in mind. If the plot be a small plot a higher price is probably obtained than if it were a large one. The precise situation of the land in each case is often a matter of very considerable importance for either enhancing or lowering the price. Again a particular person owning an adjoining property or who has some particular object in desiring to acquire some special piece of land would be inclined to pay a higher price. A smaller price would be given for an undivided share with its possible burden of litigation to obtain a partition than for an entire property, (g).

A sale of land for the purpose of a mosque for a nominal sum obviously influenced by religious and charitable motive or a sale at a much earlier date than the notification, is no criterion for the market-value of another plot on the basis of its most lucrative disposition, (h).

In estimating the market-value of the land the best evidence will be the evidence of genuine sales which took place about time of notification for acquisition either in respect of the same land or any portion thereof or the sales of lands exactly similar in all its circumstances to the sale of land under compulsory acquisition, (i). In determining the value of land acquired under the L. A. Act if there is evidence of sales of similar lands in the vicinity having similar facilities, the L. A. Officer was bound to take such sales into consideration, (j). Evidence relating to the sale of a piece of land in the neighbourhood in which there was a pucca building is not inadmissible in a case when land without building was being acquired. It may be difficult to determine the value of the land apart from the building, but it is necessarily so, and the claimant is entitled to put his evidence before the Court and ask the tribunal in a consideration of the evidence to decide what portion of the purchase price represents the value of the whole land then sold, (k).

In the method of arriving at a valuation of land by reference to prices realised by sales of neighbouring lands it is plain that no evidence of former

(e) *Secretary of State v. Sarala Devi Choudhury*, 5 Lahore 227 ; 79 I. C. 74 : (1924) A. I. R. (L) 548 ; *Atma Ram v. Collector of Nagpur*, 31 Bom. L. R. 728 : 33 C. W. N. 458 (P. C.) : 25 N. L. R. 68 ; 49 C. L. J. 398 : 57 M. L. J. 81 : 114 I. C. 587 : 1929 A. I. R. (P. C.) 92.

(f) *Fink v. Secretary of State*, 34 C. 599.

(g) *Amrita Lal Basak v. Secretary of State*, 22 I. C. 78.

(h) *Mohmed Ismail v. Secretary of State*, 1936 A. I. R. (L) 599.

(i) *Khusiram v. Assistant Collector of Shikarpur*, 17 S. L. R. 228 : 1925 A. I. R. (Sind.) 112.

(j) *Dharamdas Khusiram v. L. A. Officer*, 131 I. C. 715 : 1931 A. I. R. (L) 56.

(k) *Madan Mohan Burman v. Secretary of State*, 78 I. C. 557 : 1925 A. I. R. (C) 481.

sales can be obtained which shall be precisely parallel in all its circumstances to the sale of the particular land in question. Differences, small or great, exist in various conditions and what precise allowance should be made for these differences is not a matter which can be reduced to any hard and fast rule, (l). At the same time the instances produced must relate to lands, which on the whole have the same conditions of quality and situation as the acquired land, (m).

Sales at the time of notification under s. 4(1) :—The market price must be fixed with reference to the date of the notification under s. 4 irrespective of the previous possession of the plot by Government and its effect, if any, on the market-price. The Government should not reduce the compensation payable for compulsory acquisition by merely announcing in advance its intention of acquiring a piece of land and thus throwing a "cloud" on its market price, before issuing a notification required by the Act (n). In cases where the valuation of land cannot be based upon what the property was producing at the time of the notice of acquisition and when there have been no recent sales of the land to guide the Court, the market-value must be determined by sales of similar lands in the neighbourhood. The owner in claiming compensation can seek to prove either what the property would fetch if sold in one block or what is the present value if he plotted out the property and sold in lots. When no evidence is adduced of sales in the neighbourhood of such large blocks as under reference, the evidence before the court of sales of small pieces of land in neighbourhood enables the court to give an opinion regarding value of different portion of the block and the value of the whole must be deduced from this. Sales after the notification must be discarded when it is proved that the values have been affected one way or the other by circumstances which have arisen after that date (o).

In case of compulsory acquisition of land, the price should be assessed with reference to the probable use which would give the owner the best return. In fixing the price on this principle, it is necessary to be guided, as far as possible and reasonable by the rule enunciated by Lord Truro that the Act should be expounded liberally in favour of the public and strictly against the Government or company taking the land (p). Rates at which the nearest land with similar advantages have been sold within a short period and a few months after the notification of acquisition is issued, should be taken into consideration. An average struck from sales within a period of five years before the acquisition of land situate at different parts of the village with greatly varying advantages and defects can be no satisfactory criterion of the value of the land to be acquired specially when the price has risen

(l) *The Trustees for the Improvement of Bombay v. Karsandas*, 33 B, 28.

(m) *Raghunath Das v. Collector of Dacca*, 11 C. L. J. 612.

(n) *Mahomed Ismail v. Secretary of State*, 1936 A. I. R. (L) 599.

(o) *In the matter of Government of Bombay v. Karim Tar Mahomed*, 33 B, 325 : 10 Bom. L. R. 660 : 3 I. C. 660.

(p) *East and West India Docks Company v. Gatke*, 3 Mac. & G. 155 : 6 Rail Cas. 371 : 20 L. J. Ch. 217 : 15 Jur. 261.

since the last years or so (q). If a few of the frontage of plots are sold for building purposes, that is no evidence that the remainder of the land can be sold for building purposes. The real test by which the market-value can be arrived at is to gather from other sales what the whole land would have been likely to realise in the market about the time of acquisition (r). Where the owner of the shop acquired for the Municipal Committee, being aware that there would be compulsory acquisition for widening the road on behalf of the municipal board, enters into a sale with false consideration, so as to obtain a large amount by compensation, he is not entitled to more than the real price of the house. High rental value for taxation is immaterial where owners have voluntarily agreed to a high assessment so as to obtain extra compensation (s).

Post-notification sale :—In determining the market-value of land acquired by Government under the L. A. Act. 1894, sale of other land in the neighbourhood, with similar advantages, is cogent evidence, specially when nothing is shown to have happened which materially affected the value of the land between the date of such sale and the Government's declaration for acquisition (now notification under s. 4), (t). In determining the market-value of land to be acquired by Government post-notification transactions should not necessarily be ignored altogether. All transactions must be relevant which can fairly be said to afford a fair criterion of the value of the property as at the date of the notification. If any considerable interval has elapsed the court will naturally attach little or no value to subsequent sales, just as transactions long prior to the notification will usually be discarded (u).

The law requires that market-value of land acquired is to be determined as it was at the time of the publication of the notification and the Court should not ordinarily rely on transaction after publication of the declaration (now notification under sec. 4). Further, speculation on the value likely to be conferred on the lands taken for a particular project by completion of the project itself must also be excluded (v).

Under section 23 in determining the market-value of the land to be acquired the sale prices of similar types of land, in similar position in the past as well as after the notification under sec. 4(1) of the Act, or the fact that the land was at the time of determining its value being used for building purposes or a proposal to convert the sub-division in which the land was situate into a district resulting in acceleration of high price for the land,

(q) *Ramsaran Das v. Collector of Lahore*, 9 P.W.R. 1911 : 9 I.C. 228 ; *Hardwari Mal v. Secretary of State*, 64 I. C. 146.

(r) *Collector v. Ramchandra Harishchandra* (1926) A. I. R. (B) 44.

(s) *United Provinces v. Sri Nath Das*, I. L. R. (1944) All. 358 : 1944 A. W. R. 238 : A. I. R. 1944 (All) 216.

(t) *Gulam Hussain v. L. A. Officer, Bandra*, 31 Bom. L. R. 241 (P.C.) ; 114 I. C. 9 : 1928 A. I. R. (P.C.) 305.

(u) *Asstt. Development Officer v. Tayaballi Allibhay*, 35 Bom. L. R. 763 : 1933 A. I. R. (Bom.) 361 ; *Velayudam v. Special Tashildar*, A. I. R. 1959 Mad. 462.

(v) *The Collector of Dacca v. Golam Ajam Chowdhury*, 40 C. W. N. 1143 : 1936 A.I.R. (C) 688.

can all be taken into account even though the aforesaid factors have come into being after the notification under s. 4(1) of the Act, (w).

In a Land Acquisition proceeding the owner of the land is entitled to rely on a sale deed relating to land in the vicinity of the land acquired, executed a day after the notification in the gazette, when it is proved that the deed was executed in pursuance of an agreement entered into before the notification and that the earnest money was paid by the vendee in pursuance of the agreement to sale. Such a deed is not only relevant but is good evidence of the market value of the land on the date on which notification was made, (x).

Unregistered sales :—When in an application for varying the award of the Collector the plaintiff cited certain alleged sales in the vicinity which, though for sums over Rs. 100 were not registered and which was in favour of petitioner's son-in-law, it was held that such sales could not be considered, (z).

Compulsory sales :—The "market-value" of land may be roughly described as the price that an owner willing, and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land (a). The market value of the land acquired is the price that the owner willing, and not obliged to sell, might reasonably expect from a willing purchaser (b). The expression "market-value" means the value which a parcel of land would realise if sold in market. The seller must be a willing seller ; a forced sale affords no criterion of market-value. The purchaser also must be a willing purchaser, and, further, he must be a prudent purchaser, that is, one who makes his offer after making necessary enquiries as to the value of the lands ; an offer made by one who knows nothing of the value of the land, in the locality and who makes no enquiries about it, affords no test of market-value. The market-value is the value that can be realised on a sale in the open market. The market may be dull or brisk. But whether it be dull or brisk it cannot be excluded from consideration (c).

Claimant buying cheap :—The mere fact that the owner of the property acquired under the L. A. Act had obtained it cheap would not entitle the Government to get under the fair market-value, but the price which was paid by the owner shortly before the publication of notification would be a

(w) *Secretary of State v. Mohamed Saifor Khan*, 194 I. C. 212 : A. I. R. (1941) Pesh. 32.

(x) *Ahmed Kasim Sahib v. L. A. Officer, Ramnad*, 55 L. W. 460 : 1942 M. W. N. 456 : (1942) 2 M. L. J. 137 : 203 I. C. 567 : A. I. R. (1942) Mad. 665.

(z) *Mashawe v. Collector of Maymung*, 9 Bur. L. T. 204 : 11 I. C. 918.

(a) *Kailash Chandra Mitra v. Secy. of State*, 17 C. L. J. 34 ; *Giris Chandra Roy Chowdhury v. Secy. of State*, 24 C. W. N. 184 ; *Mohini Mohan Banerjee v. Secy. of State*, 25 C. W. N. 1002 : 34 C. L. J. 188 ; *Tulshi Makhanla v. Secy. of State*, 11 C. L. J. 408 ; *Shadhu Charan Roy Chowdhury v. Secy. of State*, 31 C. L. J. 63.

(b) *Swarna Manjuri Dassi v. Secy. of State* 55 Cal. 994 : 32 C. W. N. 421 : 49 C. L. J. 54 : 112 I. C. 706 : 1928 A. I. R. (Cal.) 522.

(c) *Government of Bombay v. Merwan Mondigar Aga*, 48 Bom. 190 : 25 Bom. L. R. 1182.

valuable piece of evidence to help the Court in ascertaining the true market-value of the property (d).

When the property under acquisition has been recently purchased, the price paid is *prima facie* the market-value thereof. The claimant may claim more than the price paid and it is open to him to contend that he bought the property at less than its market-value or that there has been a general rise in the value of the property between the date of purchase and the date of declaration. On the other hand it is open to Government to show that the price paid by the claimant was so high that no prudent purchaser would have paid it, and also that there has been a general fall in the value of the property in the neighbourhood between the date of agreement and the date of declaration (e).

In acquiring lands under the L. A. Act (of 1894) the question for enquiry is not what was the original price paid for the land or the money spent in its present disposition, or the actual income received but what was the market or sale value of the land if laid out in the most beneficial manner (f).

A claimant is not precluded from proving by evidence of sales and purchases that his land is worth considerably more than that given by him in some other proceedings and proving that his valuation there is in fact an underestimate, (g).

Claimant buying at high price :—The claimant purchased a piece of land with a bungalow on it in July, 1918 for Rs. 92,500. It was compulsorily acquired by Government in April, 1919. The plot in question was situated near the centre of the business part of the city ; all round there were public offices and other business premises. The Collector valued the land at Rs. 64,041 and, on reference, the District Judge valued it at Rs. 90,193. The claimant estimated his property at rupees two lacs and odd relying on hypothetical schemes of development, and appealed. It was held that taking all the circumstances into consideration the property acquired should be valued at Rs. 92,500. Macleod, C. J. remarked : "The two most important questions are (1) whether the claimant has paid so high a price that the Court may consider that he had not displayed the ordinary caution which a purchaser of land should display ; and (2) whether there has been any increase in the value of property in neighbourhood within the few months which elapsed between his purchase and the Government notification. When Government notified the property for compulsory acquisition, they were bound to offer the claimant what he had given a few months before for the property, unless they were able to show conclusively that he had not given fair value for the property" (h).

Where lands in hills chiefly valuable for building-stone of good quality were sought to be acquired, and it was found that the claimant who had then

(d) *Quamar Ali v. Collector of Bareilly*, 23 I. C. 542.

(e) *Government of Bombay v. Ismail Ahmed*, 26 Bom. L. R. 227 : 85 I. C. 531 : (1924) A. I. R. (B) 362.

(f) *Bhujia Balappa v. Collector of Dharwar*, 1 Bom. L. R. 454.

(g) *N. H. Mirchandani v. Special L. A. Officer, Karachi*, 101 I. C. 269 : 1927 A. I. R. (S) 168.

(h) *K. P. Frenchman v. The Assistant Collector, Haveli*, 24 Bom. L. R. 782.

started quarrying in portions had purchased them two years before at a certain rate, it was held that in the absence of evidence of change of circumstances the same rate as that at which the claimant purchased should be awarded (i).

The price paid by the claimant within a few years of the acquisition is to be taken into consideration while awarding compensation and when a depreciation is relied upon it is for the Government to prove it (j).

Where, owing to an impression that Government is proposing to make large acquisitions of land in a certain neighbourhood for certain public purposes, private purchasers have made purchases at high prices, the purchases, although imprudent, can be considered for the purpose of determining the market-value of a plot of land situated in that neighbourhood (k).

When the price paid for property has been influenced by a boom which is followed by a fall in price, the court should make a reasonable deduction in awarding compensation. Since the time when the claimant purchased his property the greatest recorded fall in a certain quarter occurred with regard to plot situated only 182 yards from the claimant's plot and the fall exceeded 50 per cent, there was a similar fall elsewhere, but the average was 44 per cent. It was held that 44 per cent of the value paid by the claimant should be deducted for the purpose of compulsory land acquisition (l).

L. A. awards of neighbouring lands :—In the category of sales fall the awards by Courts in previous cases of land acquisition. The High Court did not agree with the scheme of valuation made by the Special Judge, and has increased his award relying upon prices paid for a piece of land in the vicinity in previous land acquisition proceedings as affording a guide to the amount of compensation to be awarded. And in appeal the Judicial Committee held that there is no ground for interfering with the award of the High Court (m). *Vide also* (n).

Prices which are given by Collector to the people whose lands are acquired and who accept them, are valuable evidence in ascertaining the market value of the property in suit (o).

Where in order to enable the determination of the market-value of the acquired property, an award accepted by an owner of an adjacent property is produced in evidence, it is not obligatory on the part of the Government to examine such owner with reference to the circumstances under which the award came to be accepted. The Government using an accepted award, may or may not examine the owner or the person interested, (p).

(i) *Ghulam Hussain v. L. A. Officer, South Salsette*, 1928 A. I. R. (P.C.) 305.

(j) *N. H. Mirchandani v. Special L. A. Officer, Karachi*, 101 I. C. 269 : 1927 A. I. R. (S) 168.

(k) *Collector of Thana v. Chaturbhuj Radha Krishna*, 28 Bom. L. R. 548 : 95 I. C. 513 : 1926 A. I. R. (B) 365.

(l) *Karachi Municipality v. Naraindas*, 145 I. C. 795 : 1933 A. I. R. (S) 57.

(m) *Secretary of State v. I. G. S. N. and Railway Co.*, 36 I. A. 200 : 36 C. 967 : 14 C. W. N. 134 : 10 C. L. J. 281 : 19 M. L. J. 645 : 11 Bom. L. R. 1197.

(n) *Madan Mohan Burman v. Secretary of State*, 1925 A. I. R. (C) 481.

(o) *Secretary of State v. Amulya Charan Banerjee*, 104 I. C. 129 : 1927 A. I. R. (C) 874.

(p) *Secretary of State v. Nagendra Nath Bose*, 42 C. W. N. 27.

Offers of purchase :—The evidence of offers made by irresponsible brokers on behalf of undisclosed principal or perhaps for their own purposes without any principal behind them, however, are useless, (q).

No doubt that evidence of offers is admissible but an offer amounts merely to an opinion on the part of the person making it and when offers were oral ones unsupported by any documentary evidence they do not carry any weight or afford any assistance, (r).

Where after a notification has been issued for acquisition of a particular property negotiations are started by the Government with the owner of the property on the question of price and an offer purporting to be without prejudice is made to him, the evidence of the offer for purposes of determining value in Court in an appeal by the owner against the award of the District Judge is not admissible as it must be inferred that the parties agreed together that the evidence of the offer should not be given in Court, (s).

The sweeping remarks in *Reddiar v. Secy. of State* (t), to the effect that "no doubt, proof of bona fide offers have to be considered by a Court but the probative value of offers has, for good reasons in this country, been held to be very low indeed, for the offers alleged in land acquisition proceedings are scarcely ever bona fide. They can be easily arranged without any loss or inconvenience to either party, and individuals, respectable in their various relations of life, have no compunction in lending themselves to a fictitious transaction which may assist a friend in extracting more than his due from Government or a public body at no cost to themselves," go rather too far. "Evidence of offers is not inadmissible but might be of value in certain circumstances, as for example, if they are 'firm offers' supported by the testimony of reliable witnesses or documentary evidence, vague statement of witnesses are not of value", (u).

The fact that a number of offers were made for particular plots does not show that similar offer will be made for every plot, (v).

"No doubt evidence of offers in respect of the land has to be considered by the Court but the probative value of such evidence is very low, for offers alleged in L. A. proceedings are scarcely ever bona fide. They can easily be arranged without any loss or inconvenience to either party" (w).

Nature of sales to be proved :—The onus of proving the value of land acquired lies upon the claimant and to establish the value and selling prices of neighbouring lands, it is necessary for him to adduce numerous or at least sufficiently numerous instances of sales of lands in similar condition and use for similar purposes in the neighbourhood. In the absence of such

(q) *Secretary of State v. Sarala Devi Choudhurani*, 5 L. 227 : 79, I. C. 74 : (1924) A.I.R. (L) 548.

(r) *Abdul Rahim v. Secretary of State*, 91 I. C. 775 : (1926) A. I. R. (L) 618.

(s) *Ranzor Sing v. Secretary of State*, 92 I. C. 319.

(t) *Reddiar v. Secretary of State*, 5 Rang. 799 : 109 I. C. 11 : 1928 A. I. R. (R) 65.

(u) *Pribhu Diyal v. Secy. of State*, 135 I. C. 183.

(v) *Collector of Nagpur v. P. C. Joglekar*, 29 N. L. R. 155 : 146 I. C. 77.

(w) *Special L. A. Officer v. Assudamal*, 1938 A. I. R. (S) 225.

evidence the Court must fall back on the rental value, which is the standard generally taken for sales of house property, (x).

In a land acquisition case the amount of compensation cannot be enhanced upon the basis of conveyances of lands which have no similarity to the lands acquired, (y).

In determining the market-value of the land acquired by ascertaining the price at which the lands in the vicinity have been sold and purchased and making all due allowances for situation and the circumstances attending each particular sale, the exceptional instances should always be excluded from consideration. The only instance to be taken into consideration are those that are as similar as possible to the one under consideration, similar not only in point of site but also as regards all other intended circumstances (z). A sale by a Hindu widow of neighbouring land cannot be treated as a fair basis for calculating the market-value of land acquired under the provisions of L. A. Act in as much as it is well known that full value is never fetched at such transactions nor should an isolated transaction at which the price fetched might have been purely artificial, be made the basis of such calculation, (a).

Valuation by belts :—The principles of valuation by dividing the land acquired into front land and back land, though not generally viewed with favour, has long been followed. In (b) Garth C. J. observed : "The frontage is no doubt valuable—if instead of calculating the whole area together we were to estimate the front land at Rs. 1,000 and the back land at Rs. 600 the result will be the same." The case has been distinguished in (c) in the following terms : "We are however, unable to agree with the District Judge in regarding any portion of the site in question as 'frontage' having a special value and as regards the land dealt with in the Calcutta decision, where the plot had considerable length of the frontage on public thoroughfare or streets. Here, on the contrary, the land is surrounded on all sides with buildings which shut it out from the main arteries of the town. Nor would be proportion of one to three for frontage and back sites adopted in the Calcutta case be applicable to land so situated. Certain sites would doubtless fetch a higher value than others if the land were laid out for building purposes ; but the distinction between frontage and back sites had, we think, scarcely any practical importance in assessing its value."

In *Secy. of State v. I. G. S. N. Rail Co.*, (d). Government acquired lands on the banks of the Hughly. The owner objected to the Collector's award. The Special Judge on reference determined the amount of compensation by

(x) *Biswa Ranjan v. Secretary of State*, 11 I. C. 62 ; *Arunachala Aiyar v. Collector of Tanjore*, 96 I. C. 279 : (1926) A. I. R. (M) 961.

(y) *Hem Chandrav. Secretary of State*, 31 C. L. J. 204 : 56 I. C. 751 ; *Secy. of State v. Monmotho Nath Dey*, 2 Pat. L. R. 268 ; 84 I. C. 371 ; (1925) A. I. R. (Pat.) 129.

(z) *Amrita Lal Bysack v. Secretary of State*, 22 I. C. 78.

(a) *Nityanando Das v. Secretary of State*, 57 I. C. 734.

(b) *Prem Chand Boral v. The Collector, Calcutta*, 2 C. 103.

(c) *The Collector of Poona v. Kashinath*, 10 B. 585.

(d) *Secretary of State v. I. G. S. N. and Rail Co.*, 36 C. 967 : 14 C. W. N. 134 : 10 C. L. J. 281.

basing his calculation on a system of dividing the land into belts. On appeal the High Court rejected the Special Judge's method of valuation and upon careful consideration of previous awards and prices realised on sales of land in the neighbourhood and other matters, increased the amount. On appeal by the Government it was held by His Majesty in Council that the argument based on the great experience of the Special Judge in such case amounted to a denial of the right of the High Court to review his findings. The judgement of the High Court which gave due weight to evidence in the case was affirmed.

The question again arose for consideration in (e), where Mookerji J. in discussing the question observed : "The question next arises as to the value of the other blocks which stand on an entirely different footing. The learned vakil for the claimants has contended that the lands acquired should be divided into belts, and that the value of the second belt should be taken as half that of the first belt. But it was pointed out by this Court in the case of (f), that the mode of valuation by division into belts is artificial and does not always afford a reliable guide to the ascertainment of the market-value and this view was subsequently affirmed by the Judicial Committee. It may further be observed that if the mode of valuation by division into the belts be adopted a great deal would depend upon the depth of the belts assumed more or less arbitrarily. We must, therefore, determine the value of the first block as that of back land in relation to the third block. No hard and fast rule can be laid down as to the proportion between the value of front land and back land and it was pointed out in (g), that it can be taken as an inflexible rule, that back land is worth half the front land. In fact, in the case of (h), where the front land was valued at an exceptionally high rates as land well-fitted for the erection of shops, the back portion was valued at one-fifth of that rate because it could only be used for an entirely different and less profitable purpose."

In determining the value of frontage land the depth is a question of supreme importance. What is a suitable depth must primarily depend on the character of the buildings in the locality but in an ordinary shop and chawl locality it has been the custom for surveyors to calculate the depth at 100 feet. In the next place the value of a building frontage must depend on the higher rents that can be obtained for shops or rooms facing the street, and as the proportion of these rents to the lower rents of the back rooms decreases, so does the value of the whole frontage land decrease.... But there is no hard and fast rule that the back land must be worth half the frontage land. That would only lead to absurdities, (i). It has been observed by Maclean C. J. in (j), that "It is difficult to lay down in these cases any hard and fast rule as to what is the relative proportion of

(e) *Raghu Nath Das v. Collector of Dacca*, 11 C. L. J. 612.

(f) *Secretary of State v. I. G. S. N. and Rail Co.*, 36 C. 967.

(g) *Government of Bombay v. Karim Tar Mohamed*, 33 B. 325.

(h) *Alaul Haq v. Secy. of State*, 11 C. L. J. 293.

(i) *Government of Bombay v. Karim Tar Mahomed*, 33 B. 325.

(j) *Gurudas Kundu v. Secy. of State*, 18 C. L. J. 244 : 22 I. C. 354.

value as between the back land and the frontage land, but it is at least reasonable in seeking to fix that proportion to bear in mind how far the land stands back from the road."

In case of acquisition of land where a large area has to be valued it is impossible to fix the value of various portions of it of different rates on anything like approaching an accurate basis. The only way in which the market-value can be arrived at is to judge from other sales what the whole land would have been likely to realise in the market. It is not possible to divide the whole into separate pieces and give one value to so much of front land and divide again the interior land into separate portions and value them again at different rates, (k). Frontage land derives its value from the advantage of much higher rents being received from shopkeepers from the ground floor of buildings raised thereon. In all cases where there is a large area of undeveloped land under acquisition, it is the market-value of the undeveloped land which has to be considered and it must not be forgotten that a purchaser of such land will ordinarily expect to make a large profit on the original outlay, because in addition he will have further expenditure to make and there will be the risk that it will be some time before he can dispose of the land, (l). In (m), it has been held that where land acquired abuts on a road and the front portion is more valuable than the back, a frontage of 100 feet in depth may be allowed as a rule.

Where the value of the land in a populous locality to be acquired under the L. A. Act is to be determined, frontage i. e., immediate contiguity to high way and where there is no frontage, propinquity and easy access to highroad and powerful elements of the value to be taken into consideration, (n). In proper case a differentiation must be made in the properties acquired between frontage and back but no ratio can be fixed between the values of the former and of the latter as each case will turn on its own merits. The depth of frontage is a matter of importance and it can be best settled by assuming that the owner of a property will make the best possible use of it and that the actual 'lay-out' of the property at the time of acquisition was in all the circumstances of the case most advantageous and lucrative, it being open to the owner to show that owing to special circumstances such as minority, litigation, poverty or unbusiness-like methods, full advantage had not been taken of the property in which case assistance can be derived from the frontage of other buildings in the locality, (o). In land acquisition or improvement schemes, in and near about Calcutta, land is generally divided into blocks facing some particular street or road or lane and each block is divided into three belts, the first to a depth of 60 feet or so on the road frontage, the second to a depth of about 150 feet thereafter and the third consisting of all land behind, the relative value of the blocks being

(k) *The Collector v. Ramchandra Harischandra*, (1926) A. I. R. (B) 44.

(l) *Bombay Improvement Trust v. Ervanji Maneckji Mistry*, 96 I. C. 425.

(m) *Narsing Das v Secretary of State*, 112 I. C. 797 : 1928 A. I. R. (L) 263.

(n) *Metropolitan Board of Works v. Mc. Carthy*, 7 H. L. 243 ; *Secretary of State v. Bhupati Nath Deb*, 1936 A. I. R. (C) 346.

(o) *Pribhu Dyal v. Secy. of State*, 135 I. C. 183.

fixed in the proportion of 100, 66.6 and 50. This system of belting is widely used, but its value as a system depends much upon a variety of facts. If data are available showing the proportion at which the value of land diminished accordingly as it is situated at particular distance from a main road or thoroughfare, the system would be perfectly scientific. In the absence of any such data also, it may be assumed that in big cities where land sells by cottas or yards or feet, there is such a proportion, as common experience shows. But in places and localities where land is sold by bighas or acres, and there is no real evidence of such proportionate diminution in value, the system is based on no sound principle and must be regarded as a method not quite satisfactory. Of course there is almost always a distinction in value between front lands and back lands everywhere, but that distinction would not obviously justify a recourse in each and every case to the belting system, which is highly artificial and cannot be resorted to as a hard and fast rule that back land must be always of less value than front land or that the proportion should be as one to half or that there must be a certain proportion at a certain distance from the road (*p*). Where a plot of land which was acquired was approached by what was called a sewered ditch from one street and also by what was referred to as a common passage from another street, that common passage not however skirting the plot along any of its frontages, but merely debouching on it at one corner, it was held that the fact that the land lay in the proximity of these two streets was certainly a point to be taken into consideration in valuation but should not be magnified to the extent of treating the plot as laying within a certain belt or zone of land abutting directly on such street, (*q*). If on a consideration of the situation, size, shape and frontage of the land, the tribunal comes to the conclusion, that belting method is not a suitable one for the purpose of valuation, it does not commit an error of law regarding this matter or apply any wrong principle in fixing an average rate per cotta on the basis of the accepted awards. No hard and fast rule can be laid down and each case must be considered in view of its own special features, (*q*).

In *State of W. B. v. Bibhuti Bhusan* (*r*), it has been held that when a strip of land forming part of another plot is acquired for widening a lane the acquired strip should be valued as part of the claimant's plot whose part it formed taking into account the value of the plot to the owner. If the acquired strip is the only land not forming part of a biggest plot then the valuation should be on the basis of similar strips.

In *Uttar Pradesh Government v. H. S. Gupta* (*s*), the Supreme Court held that where there were willing purchasers for all the plots curved out of a large area, the valuation should be made on plotwise and not blockwise basis.

(*p*) *Nityagopal Sen Poddar v. Secretary of State*, 59 Cal. 921 : 141 I. C. 673 : 1933 A. I. R. (C) 25.

(*q*) *Secretary of State v. Bhupatinath Deb*, 68 C. L. J. 90. *Province of Bengal v. Joy Narayan Fatehpuria*, 82 C. L. J. 18 : 228 I. C. 523 : A. I. R. 1947 (Cal.) 25.

(*r*) *State of West Bengal v. Bibhuti Bhusan*, A. I. R. 1959 Calcutta 572.

(*s*) *Uttar Pradesh Government v. H. S. Gupta*, A. I. R. 1957 S. C. 202.

Where no evidence of sales :—Where no evidence has been adduced of sales in the neighbourhood of large blocks under reference the evidence before the Court of sales of small pieces of land in the neighbourhood enables the Court to give an opinion regarding the value of the different portions of the block and the value of the whole block must be deduced from these, (r). In assessing compensation for lands acquired under the L. A. Act where the letting value of the land is not ascertainable and the selling value of the land does not afford a reliable guide, the best course is to ascertain what is the annual value of the produce of the land in question and to proceed on that basis, (u). Where there are no willing buyers or no willing sellers at the time of acquisition of certain land, it is necessary for the Court to consider upon such information as lies at its disposal what is the value to the seller of the property in its actual condition at the time of its expropriation with all its existing advantages due to the carrying out of schemes for the purpose of which the property is compulsorily acquired (v).

Lands are bought and sold by bargaining. Land acquisition operations are carried out at places where for generations there has not been any sale of land whatsoever. The place may be such where nobody would want to buy. In such case where there is no prevailing price of land nor any standard of comparison, market value must be ascertained by finding out the income which the land was bringing to the owner and then capitalising it on the principle of reinstatement, (w).

II. Rental basis :—In the absence of evidence of the selling value of similar class of lands in the neighbourhood the only course of proceeding is to estimate the rent at which the whole plot may be leased and the purchase-money may be properly calculated at 25 years' purchase plus the amount of nazar minus the collection expenses, (x). Garth C. J. in *Perm Chand Boral v. Collector of Calcutta* (y), held "In this case I think that the learned judge in the Court below has not done full justice to the owners of the property. He has substantially adopted the valuation of the Collector and has made his award upon the supposition that the fair mode of estimating the price of the property in the market is to capitalize its present rental at so many years' purchase. This is not a fair way of arriving at the market-value. Where Government takes property from private persons under the statutory powers, it is only right that these persons, should obtain such measure of compensation as is warranted by the current price of similar property in the neighbourhood, without any special reference to the user to which it may be applied at the time when it is taken by the Government or to the price which its owners may previously have given for it. The fairest and most favourable principle of compensation to the owners is what is the market-

(r) *Government of Bombay v. Karim Tar Mahomed*, 33 Bom. 325.

(u) *Ram Sahay Shah v. Secretary of State*, 8 C. W. N. 671.

(v) *Katheasan Chettyar v. Special Collector, Twante*, 163 I. C. 172 : 1936 A. I. R. (R) 226.

(w) *Secretary of State v. Raidat Mull Nopany*, 1938 A. I. R. (P). 618.

(x) *Bejoy Kanta Lahiri Chowdhury v. Secretary of State*, 58 C. L. J. 38 : 1934 A. I. R. (C) 97.

(y) *Premchand Boral v. The Collector of Calcutta*, 2 C. 103.

value of the property not according to its present disposition but laid out in the most lucrative and advantageous way in which the owners could dispose of it."

It was contended that the personal incapacity of the owner to realise the possibilities of development is to be considered in determining the compensation to be given to him (z). This view has been negatived, (a). Profit from the most advantageous disposition of land is one test for determining its market price. The probable use of land in the most advantageous way in accordance with the use already made of neighbouring lands leads to speculative advance in prices to which regard be paid. The utility of land is an element for consideration in estimating its value, that is, the utilities which may be calculated by a prudent business man, (b). In the case of land in the vicinity of town, where building is going on, it would be unjust to adopt the second method of valuation viz :—to ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of property, if there is a fair probability of the owner being able, owing to its situation, to sell or lease his land for building purpose. The value of the land should be determined not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it, (c) & (d).

As has been said by Page C. J. in (e), that in considering what is the fair market-value of a particular land, it is right to take into account not only the use to which the land is being put at the time of acquisition, but its market-value laid out in the most lucrative and advantageous way in which the owners could dispose of it. Any potential value of the land, if not speculative ought to be taken into consideration. In view of the above authorities, the view expressed in *S. M. De Souza v. Secretary of State* (f) that "a land which is sought to be acquired should be valued upon basis of its present value, is not correct. Where certain land is used for agricultural purpose, it cannot be valued as a building site, can hardly be supported as it ignores altogether the chances of its future prospect of its being laid out in its most lucrative and advantageous way."

The true rule is that the market-value of property should be determined not necessarily according to its present disposition, but laid out in the most lucrative and advantageous disposition, (g). In determining the amount of compensation payable under the L. A. Act, in the case of bungalows and compounds attached to them the court should not look exclusively to the

(z) *Re. Merwanji Cama*, (1907) 9 Bom. L. R. 1232.

(a) *Government v. Doyal*, (1906) 9 Bom. L. R. 99.

(b) *Fink v. Secretary of State*, 34 C. 599 : *Rajendra Banerjee v. Secretary of State*, 32 C. 343.

(c) *Re. Dorabji Cursetji*, 10 Bom. L. R. 675.

(d) *Re. Munji Khetsey*, 15 B. 279 : *Trustees of Bombay v. Karsandas*, 33 B. 28.

(e) *Maung Bow v. Special Collector, Maobin*, 157 I. C. 724 : 1935 A. I. R. (R) 157.

(f) *S. M. De Souza v. Secy. of State*, 165 I. C. 585 : 1936 A. I. R. (Pat.) 542.

(g) *Mahamed Ismail v. Secretary of State*, 1936 A. I. R. (L) 599.

actual use to which the owners have put their land, but consider the most lucrative use to which the land could be put in all the circumstances of the case, (h).

The income of a property whether actual or imaginary is no doubt, one of the recognised starting points for a valuation, but it is a mistake to think that it is the only element to be taken into consideration (i). In the case of residential property, to endeavour to arrive at the market-value solely on the basis of an hypothetical rent may work grave injustice to the owner. There are commodities which may possess a value in the market not for the return they give on capital invested, but for the advantages and enjoyment which accrue from their possession. Residential property in the sense of property which a purchaser wishes to acquire for his own residence is such a commodity, (i-1). The owner of a house with a compound attached to it let out a large part of the compound to agricultural tenants whom he allowed to acquire occupancy rights therein. It was held on a question arising as to the principle of assessing compensation for the portion, that so far as the owner's interest was concerned, compensation was properly calculated at so many years' purchase of the annual profits actually received by the owner at the time of the sale. The owner might not in the circumstances be allowed to claim compensation as for a building site (j).

In computing the value of a house in a town of growing importance, twenty times the annual rental value, and not what it would cost to build a house of that description should be allowed, and the annual rental should not be merely the rent which the house is commanding at the time but what it is likely to fetch in future minus the cost of ordinary repairs, which a tenant would be likely to ask for and get from a landlord, (k).

In valuing land for the purpose of awarding compensation for acquisition under the L. A. Act, the existing advantages and possibilities of the land must be taken into account. Where a substantial portion of area acquired has been let out for industrial and residential purposes, and there is no reason why the rest of the land might not in the course of time be let in a similar way, the latter portion also ought to be assessed as land fit for industrial and residential purposes and not merely as agricultural land. Having regard to the value of land at Cawnpore, proper compensation for land within the Municipal limits would be at a rate of 20 years' purchase of the rents, (l). It is wrong to say that only the lease money of the land in dispute could be considered for arriving at its value and not the lease money accruing from the land in the vicinity. The market-value of the acquired land is to be ascertained from recent instances of sale in the same or in the

(h) *Revenue Divisional Officer Trichinopoly v. Srinivasa Ranga Iyengar*, 1937 M. W. N. 1006.

(i) *Gurudas Kundu v. Secretary of State*, 18 C. L. J. 244.

(i-1) *In the Matter of Government and Sukhanand Gurmukhrai*, 34 B. 486 : 11 Bom. L. R. 1176.

(j) *L. W. Orde v. Secretary of State*, 40 All. 367.

(k) *Rajamal v. Head Quarters Deputy Collector, Vellore*, 25 I. C. 394.

(l) *Makhan Das v. Secretary of State*, 100 I. C. 508.

adjoining locality and from the average rental of these and similar lands in the vicinity (m).

Determination of the lucrative and advantageous disposition :—"In valuing land which has been taken for public purposes under the L. A. Act the first and the most favourable principle of compensation is to enquire what is the market-value of the property not according to its present disposition but laid out in the most lucrative and advantageous way in which the owner could dispose of it. The most lucrative and advantageous way is to be determined with reference to its future utility, but it must not be entirely conjectural. As was observed in the case of (n), future utility is a thing that people have an eye in buying land and the market price of the land is affected by it, such future utility must however be estimated by prudent business calculations and not by mere speculative and impractical imagination, (o). The same principle has also been adopted by the Bombay High Court (p). In the last case it was pointed out that in the neighbourhood of a town where building was going on, it would be unfair to assess the value of land upon its present income if there is a fair probability of the owner being able, according to its situation, to sell or lease the land for building purposes. Substantially the same principle was recognised by the Judicial Committee, (q).

To determine the market-value of the land, one has to find out the price which would be obtainable in the market for the concrete parcel of land with its peculiar advantages and its peculiar drawbacks, both advantages and drawbacks to be estimated rather with reference to commercial value than with reference to any abstract legal rights. In other words, the future utility must be estimated by prudent business calculation and not be mere speculative and impracticable imagination. A hypothetical building scheme, considered as the basis of market-value, affords generally evidence of a remote, speculative and conjectural character (r).

The tribunal assessing compensation must take into account, not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market. Whether or not the particular way in which it is claimed that the land if so laid out could be disposed of to the best advantage to the owner, is one appropriate to prevailing conditions is a

(m) *Mst. Madara v. Secretary of State*, 193 I. C. 215 : A. I. R. (1941) Pesh. 13.

(n) *Rajendra Nath Banerjee v. Secretary of State*, 32 C. 343.

(o) *Fink v. Secretary of State*, 34 C. 599.

(p) *Re. Dorabji Cursetji Shroff*, 10 Bom. L. R. 675 ; *Trustees of Bombay v. Karsondas*, 10 Bom. L. R. 488 ; *In Re. Dhanjibhoy Bomanji*, 10 Bom. L. R. 701 ; *Collector of Poona v. Kashinath*, 10 B. 585 and *Re. Munji Khetsey*, 15 B. 279.

(q) *Secretary of State for Foreign Affairs v. Charlesworth Pilling*, (1901) App. Case. 373 : L. R. 28 I. A. 121 : 26 B. 1. *Abdul Huq v. Secretary of State*, 11 C. L. J. 393 : 3 I. C. 277.

(r) *Raghunath Dass v. Collector of Dacca*, 11 C. L. J. 612 ; *Government of Bombay v. Merwanji*, 10 Bom. L. R. 907.

question of fact to be decided according to the circumstances of each case, (s).

Sargent C. J.; in the case of *Collector of Poona v. Kashinath* (t), observed, that "both parties agree that the principle upon which compensation should be assessed is correctly stated in *Prem Chand Boral v. Collector of Calcutta* (u), that the value of property should be determined not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner could dispose of it, which, in the present case, would be by laying it out for building purpose. The question, then is, what would be its market-value if so laid out. It is not idle speculation or unpractical imagination that must rule estimates for the purpose of awarding compensation to the owner of land being compulsorily acquired but it is prudent business consideration such as would prevail with an intending purchaser at the imaginary market value which would have obtained if the land had been announced for sale at the time of its compulsory acquisition, that must have the greatest weight, (v).

In (w), the land when acquired was vacant. Both the Collector and the L. A. judge in making the award assumed the existence of hypothetical tenant on each plot and calculated the respective values of what were designated as landlord's interest and raiyat's interest. The total of the sums which represented the value of these interests was taken as the value of the land. It was held that the award was based on unsound principles. How much was recoverable by a landlord from a hypothetical tenant might be determined with some approach to accuracy from the rent receivable by him. But the exact value of the raiyat's interest was dependent on a number of unknown factors.

The proper way to value land is to ascertain what would be their market-value if put to the most lucrative use having regard to their condition. In assessing compensation not only is the present purpose to which the land is applied is to be taken into consideration but any other more beneficial purpose to which in the course of events the land might within a reasonable period be applied should also be considered. The special adaptability of lands for building purpose is an element to be considered in fixing the compensation even though the lands are used for agricultural purposes at the time of acquisition, (x). In computing amount of compensation to be awarded to the person interested therein the courts should be guided by the principle that the owner is entitled to have the price of his land fixed in reference to the probable use which will give him the best return, and not merely in accordance with its present use or disposition, and any and every element of value which it possesses must be taken into consideration in so

(s) *Mohini Mohon v. Secretary of State*, 34 C. L. J. 188 : 25 C. W. N. 1002 (1004) (1007).

(t) *Collector of Poona v. Kashinath*, 10 B. 585.

(u) *Premchand Boral v. Collector of Calcutta*, 2 C. 103.

(v) *Khusiram v. Assistant Collector, Shikarpur*, (1925) A. I. R. (S) 112.

(w) *Hem Chandra Chowdhury v. Secretary of State*, 31 C. L. J. 204.

(x) *Venkata Krishnayya Garu v. Secretary of State*, 39 M. L. T. 551 : 27 L. W. 253 ; 1928 A. I. R. (M) 89.

far as it increases the value to the owner ; though it is the present value alone of such advantages that has to be determined, any advantage due to the carrying out of the scheme for which the property is being compulsorily acquired, being excluded. Where owing to the situation of the land acquired it has a special adaptability for being used for building purposes, it cannot be treated as purely agricultural (y).

The Privy Council held : "where in determining a question of valuation, the Court had ignored the considerations pertinent to the land itself and had founded its judgment exclusively upon evidence of the prices paid for adjoining plots which had been acquired at the same time and of the fact that the owners of those adjoining plots had not appealed against the Collector's assessment, this method of arriving at a valuation was erroneous and based upon a mistaken principle. Where a substantial portion of the land acquired has been used for industrial and residential purposes, it is open to the Court to award compensation on the footing that the entire land bore such a character", (z).

Demand :—The most important point in considering the question is whether there is any particular demand for land for building speculation. If there is evidence that there is a demand for lands of that description in the locality in which the land acquired is situate, certainly it is most important factor to be taken into consideration for arriving at that market-value of the property. Otherwise it is merely "impractical imagination." In awarding compensation for agricultural land acquired by the Government, the Court should take into consideration the probability, if any, for demands for the land in question for building purpose, (a).

The general demand for land, and the consequent reflex action on the price of all classes of lands is a factor in the calculation of the market value of lands under acquisition, (b).

Where claimants demand prices for their land as building land they must show that it either is building land or is likely to become building land at an early date, (c).

An award of compensation cannot be made on speculative and hypothetical schemes of the future development of the land, (d). Although in ascertaining the market-value of land sought to be acquired under Act I of 1894 the general principle to be applied is that the value of the land should be calculated with reference to the most lucrative and advantageous way in which the land might be used, if it is apparent that the use of such land for some special purpose e. g., as building sites would never be permitted the land should not be valued as if it could be utilised for such purpose, (e).

(y) *Secy. of State v. Chuni Lal*, 12 Lah. 117 : 131 I. C. 354 : 1931 A. I. R. (L) 207 ; *Atmaram v. The Collector of Nagpur*, 33 C. W. N. 451 (P.C.).

(z) *Makhan Das v. Secretary of State*, 100 I. C. 508 : 25 A. L. J. 137.

(a) *Secretary of State v. Gopal Singh*, 1, I. C. 210 ; *In re. Merwanji Muncherji Camc*, 9 Bom. L. R. 1232.

(b) *Fink v. Secretary of State*, 34 C. 599.

(c) *Secretary of State v. Gobinda Ram*, 11 I. C. 138.

(d) *Basavarajee Krishna Raw v. Head Asstt. Collector, Bezwada*, 15 I. C. 672.

(e) *Stebbing v. Metropolitan Board of Works*, 6 Q. B. 37 ; *Ujagar Lal v. Secretary of State*, 33 A. 733.

Where except for a small portion of land, the land in dispute had no value as a building site because the demand for buildings was limited, the value of the land should be assessed on the basis of what was its worth as an agricultural land, (f).

Adaptability or potential value :—Sometimes it happens that the land to be valued possesses some unusual, and it may be, unique features, as regards its position or its potentialities. In such a case the arbitrator in determining its value will have no market-value to guide him and he will have to ascertain as best as he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser for the land in the particular position and with the particular potentialities. "For it has been established", said Lord Romer in (g), "by numerous authorities that the land is not to be valued, merely by reference to the use to which it is being put at the time at which its value has to be determined (that time under the Indian Act being the date of notification under sec. 4), but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed, is required for this proposition. It is a self-evident one. No one can support in the case of land which is certain or even likely to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be. It is plain that in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account. It is equally plain, however that the land must not be valued as though it had already been built upon, a proposition that is embodied in sec. 24(5) of the Act, and is sometimes expressed by saying that it is the possibilities of the land and not its realised possibilities that must be taken into consideration." The claimants are entitled to claim that the compensation should be awarded to them on the footing that the "value of land should be determined, not necessarily according to its present disposition but laid out in its most lucrative and advantageous way in which the owner can dispose of it." When the land was acquired for the purpose of making a reservoir and it had a special adaptability for the same, it was held that the tribunal assessing compensation ought to include in its consideration the special adaptability as an element of value, (h). If the land has, what may be called an adventitious value, i. e., something beyond its agricultural or normal value and that is a marketable value in this sense that persons, wishing for a purpose for which the land is particularly applicable to purchase that land, then the arbitrator has a fair right to take that into consideration ; it is a matter, no doubt, contingent, but still it is a matter which is not to be ignored or put out of the consideration. Where a piece of land is compulsorily acquired by

(f) *Tara Singh v. Secy. of State*, 34 P. L. R. 997 : 1933 A. I. R. (L) 508.

(g) *Sri Raja Vyricherla Narayan Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam*, 66 I. A. 104 : 1939 I. L. R. (M) 532 : 43 C. W. N. 559 : 1939 A. I. R. (P.C.) 98.

(h) *In Re. Lucus and Chesterfield Gas and Water Board*, (1909) 1. K. B. 16,

Government for quarrying purpose its special adaptability for quarrying is an element for consideration in fixing the amount of compensation, (i).

"The proposition may be taken to be well established that the special, though natural, adaptability of the land for the purpose for which it is taken, is an important element to be taken into consideration in determining the market-value of the land (j). 'It is quite true' observed Grave, J. 'that land might be rightly valued at more than its value as agricultural land, if the land had any other capabilities, for railway land or irrigating purposes, or for water-works, or for anything else, and they are reasonable and fair capabilities not far-fetched hypothetical capabilities but reasonably fair contingencies. These are fair things to be considered by an arbitrator' (k). A certain property was by reason of its location more valuable for saloon purposes than any other, and at the time of condemnation (i. e., acquisition) proceeding it was under lease for a term of five years for a good annual rental, and was then used to carry on saloon business. It was contended on behalf of the owner that he was entitled to compensation on the basis of annual rental, which indeed was the highest rental which any one would give for the property. The Supreme Court of Tennessee held that in estimating the market-value of the property all of the capabilities of the property, and all the legitimate uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner. The proper principle is to ascertain the market-value of the land taking into consideration the special value which ought to be attached to the special advantage possessed by the land ; namely, its proximity to the Leborg Cantonment, its special adaptability for a rifle range, and the unique character for such adaptability," (l).

Mookerjee, J., observed : "The recognition of this potential value, as it has been called, may be found in a variety of cases, (m). (Potential value of agricultural land for building purposes) (n) ; (contiguity of land to a reservoir making it suitable for building a mill) (o) ; (future profitable working for mine) (p) ; (Contiguity of land to a lake making it specially adaptable for use as a reservoir) ; (fitness of land for reservoir) (q) ; (fitness of land as base for water supply) (r) ; (adaptability of land for railway purpose) (s) ; (suitability for development of water power) (t), the principle has also been

(i) *Daya Khushal v. Asst. Collector, Surat*, 38 B. 41 : *Government of Bombay v. N.H. Moss*, 47 B. 218 ; *Secretary of State v. Shan Mugaraya Mudaliar*, 16 M. 369.

(j) *R. H. Wernicke v. The Secretary of State*, 13 C. W. N. 1046 (1050).

(k) *Assalinsky v. Manchester Corporation*, (*Brown and Allon's Law of Compensation*, 2nd Edn. 659).

(l) *McKinney v. Nashville*, 102. Tenn. 131.

(m) *Mohini Mohon Banerjee v. Secretary of State*, 25 C. W. N. 1002.

(n) *R. v. Brown*, (1867) L. R. 2 Q. B. 630.

(o) *Ripley v. G. N. Ry. Co.*, L. R. 10 Ch. 435.

(p) *Brown v. Commissioner for Railways*, (1890) 15 App. Cas. 240.

(q) *Riddele v. Newcastle Water Co.* (1879) 90 L. T. 44n.

(r) *In re. Gough and Aspatria*, (1903) 1 K. B. 574 : (1904) 1 K. B. 417.

(s) *Sidney v. N. E. Rail Co.* (1914) 3 K. B. 629.

(t) *Ceders Rapids Manufacturing and Power Co. v. Lacoste*, (1914) A. C. 569.

applied where the land of the claimant, though not in itself adaptable for a reservoir, is so adaptable in conjunction with other adjacent lands belonging to other owners, (u). Examples of the recognition of the doctrine of potential value and special adaptability may also be found, (v). The true rule was tersely stated by Lord Dunedin in pronouncing the opinion of the Judicial Committee in two recent cases.

In *Ceders Rapid's* case (w), he formulated the proposition that 'the value to be paid for is the value to the owner as it exists at the date of the taking ; *such value consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined.*'

In *Odium v. City of Vancouver* (x), he added the necessary corollary that 'while all opportunity of employment for a certain purpose in regard to the position of the land to be acquired is to be taken into account, there must come a point when the opportunity becomes so remote as to be negligible. This brings into clear relief the fundamental importance of the test that the operative effect of special adaptability or future utility must be estimated, not by idle speculation and impractical imagination but by prudent business consideration such as would weigh with an intending purchaser at the imaginary market-value which would have ruled had the land been exposed for sale, when it was subjected to compulsory acquisition.' The question is whether there is a market at all for a tract of land for use for a specified purpose. In the present case there is no room for controversy that there is trustworthy evidence to show that if the acquired lands had been thrown into the market, adjoining brick-field owners would in all probability have come forward to purchase them or to take lease of them for inclusion in their brick-fields. The District Judge has thus rightly concluded that there was reasonable probability that the lands might have been taken up by the adjoining owners for the extension of their brick-field and this possibility must be taken into consideration in calculating the amount to be awarded as compensation upon compulsory acquisition."

If, however, the special value exists only for the particular purchaser who has obtained power of compulsory purchase it cannot be taken into consideration in fixing the price.

But where the special value exists also for other possible purchaser, the owner is entitled to have this element of value taken into consideration, (y).

(u) *Mayor Tynemouth v. Duke of New Castle*, (1903) 89 L. T. 557 : 19 T. L. R. 630.

(v) *Highly Mills v. Secretary of State*, 12 C. L. J. 489 ; *Rajendra Nath v. Secretary of State*, 32 C. 343 ; *In Re Munji Khetsey*, 15 B. 279 ; *Government v. Doyal Mulji*, 9 Bom. L. R. 99 ; *In Re Dhanjibhoy*, 10 Bom. L. R. 701 ; *In Re Dorabji Cursetji*, 10 Bom. L. R. 675 ; *In Re Sorabji Jamsedji Tata*, 10 Bom. L. R. 696 ; *Daya Khushal v. Assistant Collector, Surat*, 38 B. 37 : 21 I. C. 325 ; *Abdul Rahim v. Secretary of State*, 1926 A. I. R. (L) 618.

(w) *Ceders Rapids Manufacturing and Power v. Lacoste*, (1914) A. C. 569.

(x) *Odium v. City of Vancouver*, (1915) 85 L. J. P. C. 95.

(y) *Thareesaruma v. Deputy Collector, Cochin*, 45 M. L. J. 339 : 18 L. W. 356 : (1923) M. W. N. 682 : 33 M. L. T. 48 : 77 I. C. 347. *Raja of Pittapuram v. Revenue Divisional Officer, Coconada*, 42 M. 644 : 21 L. W. 88 : 86, I. C. 238 : 1925 A. I. R. (M) 818.

The essential element to be taken into account in determining the market-value of land compulsorily taken is fact of its probable user, (z). The proper method for ascertaining the market-value of agricultural lands situated within a municipal area is to ascertain what would be their market-value if they were put to the most lucrative use having regard to their condition, local position and advantages, (a). If the land acquired has potential value as a mill-site this should be taken into consideration in fixing the compensation though it may be in close proximity to the Gun and Shell Factory, (b).

In assessing compensation not only is the present purpose to which the land is applied to be taken into consideration but any other more beneficial purpose to which in the course of events the land might within a reasonable period be applied should also be considered. The special adaptability of lands for building purposes is an element to be considered in fixing the compensation even though the lands are used for agricultural purposes at the time of acquisition, (c). Where under the L. A. Act some land was acquired which was worthless in itself but which had potentiality of being used for saltworks, it was held that the owner was entitled to the market-value of that potentiality, but only the present market-value of that potentiality, (d).

Though in valuing land which has been acquired under the L. A. Act the market value should be ascertained with reference to the future utility of the land the valuation must not be conjectural (e). Land should not be valued merely with reference to its present use, or, in other words, with reference to the income that as at present derivable from it by the owner there. In assessing market-value the potentiality of the land and the number of persons capable of turning it into account must be taken into consideration. The desire of a particular purchaser to purchase the land more than others may always be taken into consideration for what it is worth (f). In ascertaining the market value the potential value should also be estimated even though the prospective buyer may be only one person when there is no building activity (g). When there is no evidence of building activities in the neighbourhood at the time of notification, no question of potentiality of the land as building sites can possibly arise (h).

Pending Development Schemes.—In 1952, in order to relieve congestions in great cities in England, the British Parliament passed the Town Develop-

(z) *In the matter of Government and Dayal Mulji*, 9 Bom. L. R. 99.

(a) *Collector of Dacca v. Hari Das Bysack*, 14 I. C. 163.

(b) *Secretary of State v. Naresh Chandra Bose*, 44 C. L. J. 1 : (1926) A.I.R. (C) 1000.

(c) *Venkata Krishnayya v. Secretary of State*, 39 M. L. T. 551 : 27 L. W. 253 : 107 I. C. 503 : 1928 A. I. R. (Mad.) 89.

(d) *Vallabhadras Naranji v. The Collector*, 33 C. W. N. 549 (P.C.) : 49 C. L. J. 497 : 26 A. L. J. 1384 : 29 L. W. 196 : 115 I. C. 730 : 1929 A.I.R. (P.C.) 112.

(e) *Choithram Begraj v. Secy. of State*, 25 S. L. R. 285 : 131 I. C. 222 : 1931 A. I. R. (S) 52.

(f) *Nagendra Nath Sahu v. Bhagwati Prasad Narayan Singh*, 223 I. C. 553 : A. I. R. (1946) Pat. 447.

(g) *Kasinath Mukherjee v. Collector of Puri*, A. I. R. 1962 Orissa, 21 : I. L. R. (1961) Cut. 221.

(h) *Raghubans Narain Singh v. Uttar Pradesh Government*, 1967 (II) S. C. J. 214.

ment Act, 1952, with powers given for acquisition of lands for settling surplus influx of population in similar towns. Basingstroke was selected to receive influx from London and some lands were acquired. It was contended by the claimants that valuation of lands should not be on the basis of agricultural lands but on the footing that it has development scheme and planning permission. Further the Tribunal must distinguish between the relevant land (under acquisition) and the 'other land' (belonging to other people). *Held* (Per. Lord Denning M. R. and Davies and Russel JJ.)—'The Tribunal was to ignore any increase induced by the artificial influx from London ; and was not to credit the industrial land with certainty of obtaining development certificates, but only with chance of these.'

The legislature was aware of the general principle that in assessing compensation for compulsory acquisition of a defined parcel of land you do not take into account an increase in value of the parcel of land if the increase is entirely due to the scheme involving the acquisition that was settled. (i).

Hypothetical Building Schemes.—Hypothetical building schemes are the usual basis of valuation in case of building lands, but the course there contemplated is that a surveyor should be called who would unfold a scheme giving details of the amount to be spent and estimating probable returns which could be tested in cross-examination. A claimant cannot ask the Court to value his land on that basis where he has not adopted this course, (j). Owners are entitled to ask for compensation by estimating the market-value of the property in the most lucrative and advantageous way in which the owners could dispose of it, but in order to apply this principle the owners should put forward schemes showing how the sites in question could be developed. Where the immediate use of a particular piece of land for building purposes is impracticable unless a body or syndicate could acquire all the interests of the various owners and prepare a scheme for development of the site as a whole, the potentialities of the site for building purposes cannot be considered great, (k). In ascertaining the value of land acquired, due allowance must be made for the probable use which would have given the dispossessed owner the best return and not merely its present use or disposition. But the presumption must be that a man makes the best of his own property. It is not sufficient to rely on hypothetical building schemes but the owner must show that he was going to make a certain use of his property which would have brought him in profits or that he would have made such use of it had he not been prevented by unavoidable circumstances, if he wishes the Court to give an enhanced value to that property on acquisition by Government, (l).

(i) *Viscount Camrose v. Basington Corpn.*, (1966) 3 All. E. R. 161 : also see *Pointe Gourde Quarrying Transport Co. Ltd. v. Sub-Intendent of Crown Lands*. (1947) A. C. 565 and in *Davy v. Leeds Corpn.* (1965) All. E. R. 753.

(j) *Narsing Das v. Secretary of State*, 112 I. C. 797 : 1928 A. I. R. (L) 263.

(k) *Abdul Rahim v. Secretary of State*, 8 L. L. J. 363 : 27 P. L. R. 679 : 1926 A. I. R. (Lah.) 618.

(l) *Pribhu Dyal v. Secy. of State*, 135 I. C. 183.

Market-Value for acquisition of bazar.—When a bazar (market) is acquired under the L. A. Act the claim of the proprietor ought not merely to be treated upon the rental basis, but should be based upon the permanent rents received from the shops in the bazar, and also on the loss of earning in respect of profits in respect of tolls received from people who came to the bazar with basket, such profits varying according to the number of baskets brought by the sellers to the bazar. When a bazar was liable to competition from a rival bazar which might be started in the neighbourhood, thus diminishing its income, and its profits were not dependent solely on permanent rents of the shops, but were also based upon the fluctuating elements of tolls received from people who came to the bazar in varying numbers with basket for the purpose of selling their articles, it was held that the valuation of the bazar at 18 $\frac{2}{11}$ years' purchase was fair and proper (*m*). Bazar lands must fetch a higher value than lands situate outside the bazar. In the absence of evidence of the selling-value of similar class of khas lands in the neighbourhood, the only course of proceeding is to estimate the rent at which the whole plot may be leased and the purchase money may be properly calculated at 25 years' purchase plus the amount of *nazar* minus the collection expenses, (*n*).

Valuation of Inam lands.—In determining compensation payable under the L. A. Act the element of non-transferability of the land cannot enter into consideration. The publication of the declaration under section 6 has the result of removing all restrictions on the rights of the owner and the Inam land after the declaration under sec. 6 stands on the same footing as any free-hold land. Where the Inam is granted in pre-British period to the ancestor of the present holder as remuneration for services, even if the grant meant an assignment of revenue and not of land it is capable of being regarded as an alienated land and the grantee is not a mere licensee but an owner of the land. He has interest in the land for the purpose of sec. 21 L. A. Act and is entitled to receive the value of that interest, (*o*).

Valuation of agricultural land.—In calculating the value of agricultural land the calculation must be based on the average produce per year per acre and not on the maximum crop, (*p*). In determining the costs of cultivation and the number of years' purchase the decisions relating to pre-war times and to conditions in Behar and Bengal cannot be applied to the present day conditions in Chota Nagpur. In respect to lands in Dalbhum the estimate of cultivation expense at one-half the gross produce over a period of years is by no means high and 15 years' purchase is not too low, (*q*).

Market value of grove land.—Market value on the basis of which compensation is payable under Sec. 23 of the Act means that a price that a

(*m*) *C. E. Grey v. Secretary of State*, 39 I. C. 619.

(*n*) *Bejoy Kanta Lahiry Chowdhury v. Secy. of State*, 58 C. L. J. 38 : 1934 A. I. R. (C) 97.

(*o*) *Shafkat Hussain v. Collector of Amoraoti*, 142 I. C. 364 : 1933 A. I. R. (Nag.) 208.

(*p*) *Secy. of State v. Kalyandas*, 25 S. L. R. 304 : 134 I. C. 1002 : 1931 A. I. R. (S) 161.

(*q*) *Gokul Krishna Banerjee v. Secy. of State*, 137 I. C. 116 ; 1932 A. I. R. (Pat.) 134.

willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages and its potential possibilities when laid out in most advantageous manner, excluding any advantages due to the carrying out of the scheme of acquisition.

Method of valuation by ascertaining annual value of produce is not adequate, because owner may not have put property to its best use and secondly the grove may not have yet started giving maximum yield, such method should be resorted to only when no other alternative method is available but the offer of a willing prospective purchaser should be accepted.

To grant interest on excess of compensation is discretionary but once discretion is exercised, court has no further discretion and interest if awarded has to be at 6 per cent. Question as to rate of interest payable under Sec. 28 is a pure question of law depending on interpretation of Sec 28, (r).

Market value of land in municipal area.—The only basis upon which compensation can be assessed in respect of lands within a municipal area is the rental at so many years' purchase determined on the basis of municipal assessment and according to the principles laid down in (s) viz., one-sixth should be deducted from municipal assessment on the whole area for road-cess and other costs, and taxes and ground-rents should also be deducted and the balance should be estimated at 20 years' purchase (t). Section 32 of Act V of 1876 the Bengal Municipal Act (corresponding to section 30 of Act III of 1884) enacted that "all roads, bridges, embankments, tanks, ghats, wharfs, jetties, wells, channels and drains in any Municipality (not being private property) and not being maintained by Government or at the public expense, now existing, or which shall hereafter be made, and the pavements, stones, and other materials thereof and all erections, materials, implements, and other things provided therefor shall vest in and belong to the Commissioners." The question arose in *Chairman Naihati Municipality vs. Kishori Lal Goswami*, (u) whether on the acquisition of road vested in Municipality running through the zamindari of a landlord, the landlord is entitled to any compensation. It was held that the word "road" does not mean everything above and below the road, and according to the principles laid down in (v) the sub-soil did not belong to the Municipality. So it is was held that when the land was no longer required for a public road the owner was entitled to have it (w). To set at rest the question once for all the Legislature added the words "including the soil" after the word "roads" in section 30 of the Bengal Municipal Act III of 1884 by Bengal Act IV of

(r) *Raghubans Narayan Singh v. The U. P. Government*, A. I. R. 1967 S. C. 465.

(s) *Secretary of State v. Baij Nath Goenka*, 12 C. W. N. cc.

(t) *Tulsi Makhania v. Secretary of State*, 11 C. L. J. 408.

(u) *Chairman Naihati Municipality v. Kishori Lal Goswami*, 13 C. 171.

(v) *The Vestry of St. Mary Newington v. Jacobs*, L. R. 7 Q. B. 47.

(w) *Madhusudan Kundu v. Promoda Nath Roy*, 20 C. 732.

1894, section 22. So under the present Bengal Municipal Act (Bengal Act XV of 1962), sec. 95 the sub-soil also belongs to the Municipality, (t).

Under the old Calcutta Municipal Act of 1899, in respect of compulsory acquisition of land by a Municipal authority the market-value of the land was, in the absence of any evidence to contrary, presumed to be 25 times the annual value of the property as entered in the municipal assessment book (vide s. 557 (d) Cal. Municipal Act, 1899) (u).

Where land acquired under the L. A. Act is situated in a Municipal town and has buildings and trees upon it, the proper method of calculating the amount of compensation to be paid therefor, in the absence of any positive evidence of the prevailing price of large tracts of adjoining lands, is to capitalise the letting value of the land, add to it the value of buildings and trees standing thereon and add 15% on the total value of the property acquisitioned. (v). The onus of proving the value of land acquired lies upon the claimant and to establish the value and selling prices of neighbouring lands, it is necessary for him to adduce numerous or at least sufficiently numerous instances of sales of land in similar conditions and used for similar purposes in the neighbourhood. In the absence of such evidence the Court must fall back on the rental value, which is the standard generally taken for sales of house property in the European quarters of Calcutta. The amount which a claimant has succeeded in procuring from time to time from his house in its ordinary state of repairs in which he keeps it, is to be taken into account and some allowance is to be made for possible future improvements and the land should be valued at twenty years' purchase of the net profits after deducting a certain percentage for repairs and taxes (w).

An occupancy raiyat, occupying land in Calcutta, which is not situated in the midst of agricultural land and where changing conditions have given it an increased value as being a prospective building site, is entitled only to the capitalized value of the tenant's interest. The landlord is to get the whole of the balance and not only a sum representing the capitalized value of the rent and an estimated sum for the value of possible enhancement in the future, (x). In valuing land for the purpose of awarding compensation for acquisition under the L. A. Act, existing advantages and possibilities of the land must be taken into account. Where a substantial portion of an area acquired has been let out for industrial and residential purposes, and there is no reason why the rest of the land might not in the course of time be let in a similar way the latter portion also ought to be assessed as land fit for industrial and residential purposes and not merely as agricultural land. Having regard to the value of land at Cawnpore, proper compen-

(t) *Nihal Chand v. Azmat Ali Khan*, 7 A 362 : *Nagar Narsi v. The Municipality of Dhandhuka*, 12 B, 490 ; *S. Sunderam Ayyer v. Municipal Council of Madura*, 25 M, 635.

(u) *Ahidhar Ghose v. Secy. of State*, 57 I. A. 223 : 58 Cal. 31: 34 C. W. N. 877 ; 52 C. L. J. 138.

(v) *Krishna Bai v. Secretary of State*, 42 A. 555 : 18 A. L. J. 695 ; 57 I. C. 520.

(w) *Biswa Ranjan v. Secretary of State*, 11 I. C. 62.

(x) *Nibas Chandra Manna v. Bepin Behari Bose*, 53 C. 407.

sation for land within the Municipal limits would be at the rate of 20 years' purchase of the rents, (y).

Where land sought to be acquired was land situate within the Municipal limits of a large and growing town and according to the evidence it had a road frontage and was fit for building purposes, although it was in fact agricultural land, it was held that the compensation should be based on the prospective use and special adaptability of the land and that under the circumstances Rs. 600 per acre would be a reasonable price (z). In Calcutta and its suburbs the number of years taken in capitalizing upon a rack rental is usually 20, not 25, (a).

A Municipality has no right or power under the District Municipal Act to refuse permission to build upon lands which the Municipality intends to acquire, and by this means prevent building sites from being used for buildings and thereby render them valueless, so that the Municipality may be enabled to acquire them under the L. A. Act at a reduced valuation. In spite of the refusal of the Municipality to permit building, the lands must be valued on the basis of building sites and not otherwise; in other words the refusal of permission to build cannot be taken into account in valuing the lands for purposes of acquisition, (b).

Market-value of land lying fallow :—In *Kailash Chandra v. Secy. of State* (c) their Lordships of Privy Council held, "Their Lordships think it desirable to say that certain observations in the judgment of Lindsay, J. cannot be supported," (d). Lindsay, J. appears to have taken the view that under Sec. 23 of the Act of 1894 as amended by the Act of 1919 the market-value of land must be treated as nil if the owner was not deriving any profit from the land at the relevant date. He held 'in either case the owner is liable to be expropriated without compensation if a notification issues under the Act while land is not being put to actual use. It is difficult to imagine that cases of this kind were in contemplation when the Act was passed, but the language of the Act, as it stands, must, if followed lead to these results. It must be left, therefore, to the legislature to declare whether it was intended to invest the Improvement Authorities with this power of confiscation, or to amend the Act so as to avoid the results abovementioned'. It would appear that in view of Full Bench in *Makhandas's* case, (d). neither a plot of land used by its owner as a garden at the relevant date, nor a plot of agricultural land lying fallow at the relevant date is being put to any 'use' within the meaning of

(y) *Makhan Das v. Secretary of State*, 100 I. C. 508 : 25 A. L. J. 137 : *Secretary of State v. Makhan Lal*, (1929) A. I. R. (L) 112.

(z) *Venkata Krishnayya v. Secretary of State*, 39 M. L. T. 551.

(a) *Secretary of State v. Amulya Charan Banerjee*, 104 I. C. 129 : 1927 A. I. R. (Cal.) 874.

(b) *Manaklal Hirabhai v. L. A. Officer, West Khandesh*, 39 Bom. L. R. 142 : 168 I. C. 705 : 1937 A. I. R. (B) 177.

(c) *Kailash Chandra v. The Secy. of State*, 73 I. A. 134 : 226 I. C. 40 : 59 L. W. 513 : 1946 A. L. J. 318 : 1946 A. W. R. (P. C.) 120 : A. I. R. (1946) P. C. 132 : (1946) 2 M. L. J. 295 (P. C.) : I. L. R. (1946) All. 738 : 1947 A. L. W. 11 : 1947 O. W. N. (P. C.) 11 : 50 C. W. N. 663.

(d) *Secretary of State v. Makhandas*, I. L. R. 50 All. 470 (F. B.).

Sec. 23, because the owner is deriving no profit therefrom ; consequently, in the view of the Full Bench, the owner is not entitled to any compensation on its compulsory acquisition. Their Lordships are unable to assent to this view. On the true construction of Sec. 23 the former plot ought to be valued as garden and the latter plot ought to be valued as agricultural land. The effect of Sec. 23 (3A) of the Act of 1894 as amended is that the possibility of a garden or agricultural plot being used (e. g., for building purposes) in future must be disregarded. It is significant that sub-clause (b) of that sub-section makes provision for the case of the owner having taken active steps and incurred expenditure to secure a more profitable use of the land. In such a case the owner may be paid "further compensation based on his actual loss. Apart from such a case, only the present use of the land can be considered for the purpose of arriving at the market-value." Under section 23 of L. A. Act as amended by the U. P. Town Improvement Act, the market-value of the land has to be assessed according to the use to which the property is being put at the date of acquisition as distinguished from the use to which it is capable of being put in the future. In other words, all ideas of potential value of the land have to be excluded when assessing the market-value of the property. The expression "market-value" means the price which a willing seller might reasonably expect to obtain from a willing purchaser. If between a willing purchaser and a willing seller a plot fetches a certain price according to the use to which it is being put at the date of sale, then that price is the market-value of the sold plot under the amended section. In other words, if a plot of agricultural land fetching a small income is sold as such and the buyer also buys it for agricultural uses, but pays a price which bears no comparison to the price arrived at by a capitalisation of the rents then the market-value for which the sale has been made and not the value arrived at by capitalising the rents. Sale of neighbouring plots of land similarly used and sold for the same use at a certain price on or near the date of notification will furnish a good guide of market-value. If there is good evidence of offers regarding such plots that evidence would also be relevant provided it is held that the offers were of a genuine character. Even expert evidence as to the market-value of similarly used plots may be taken into consideration. The net yield of the land at the time of the acquisitions and an estimate of the market-value by capitalising it on the basis of certain period of time is only one of the modes and not the only mode of assessing market-value. It is not always a satisfactory method and considerable element of conjecture finds place in this method, (e).

Unworked land includes dormant mines :—In *Burrakar Coal Coy.'s Case* (f) in dealing with whether The Coal Bearing Areas (Acquisition and Development) Act 20 of 1957 was *ultra-vires* the Constitution of India under Arts. 19, 31 & 31A and notification under the said, Act applying to dormant mines whether valid, the Supreme Court has held

(e) *Governor-General-in-Council v. Ghias-ud-din*, 50 P. L. R. 212 : A. I. R. 1949 East Punjab 162.

(f) *Burrakar Coal Co. Ltd. v. The Union of India*, 1961 (II), S. C. A 523.

that the expression 'unworked land' occurring in the Preamble should be given its ordinary meaning that is, land which was not being worked at the time of notification issued under the Act, which would include dormant mines and that the absence of provision in Sec. 13 of the Act providing for compensation for mineral rights cannot by itself justify the conclusion that the Act was intended to apply to virgin lands only. The land includes all that lies beneath the surface. Here compensation is specifically provided for the land which is to be acquired under the Act. Such a law cannot be called in question on the ground of inadequacy of compensation.

Market value of bustee lands in Calcutta :—A piece of bustee land was acquired at the expense of the Corporation of Calcutta and the Special L. A. Judge in a reference under section 18 of the L. A. Act refused to admit evidence relating to the under-tenants and the rents paid by them and disallowed questions put to a valuer with regard to sales in the neighbourhood which were not bustee lands. It was held that cl. (c) of section 557 of the Calcutta Municipal Act III of 1899 B. C. (now section 524 of Act 33 of 1951 B. C.) which amends the L. A. Act, means that when a land is compulsorily acquired, any use to which the land may be put in future should not be taken into consideration in determining its value, but the valuation shall be determined according to the market-value then existing of the land or the building in the position that the matters then were ; that this clause precludes evidence being given of the purposes to which the bustee lands can be put in future and the L. A. Judge rightly refused to admit evidence relating to the under-tenants and the rents paid by them, such matter being not relevant for the purpose of ascertaining the market-value as defined by cl. (c) of section 557 ; that the Judge was right in disallowing questions put to the witness with regard to sales of other lands in the neighbourhood which were not bustee lands although in ordinary cases under section 23 such evidence would have been admissible ; that the presumption under clause (d) of section 557 is rebuttable presumption and it is so until the contrary is shown that the Court is entitled to presume that 25 times the annual value of the property as entered in the assessment book is the value of the property within the meaning of sub-section (2), (g).

In the case of bustee land in a city like Calcutta the principle of assessing the amount of compensation to be allowed at so many year's purchase of the rental, is not unsound. If twenty years' purchase be arrived at after considering the future possibilities of the land for building purposes, the situation of the land, the fact that it has been opened out by new roads, that it is now an open space, and matters of that class, it cannot be said that such a principle of valuation was *per se* wrong or contrary to law, (h). A L. A. Judge considering the evidence produced but without indicating any particular evidence came to the conclusion that the award of the Collector should be increased to some extent, and made an all round increase of Rs. 100 per cottah. It was held, that the increase could not be

(g) *Manindra Chandra Nundy v. Secretary of State*, 41 Cal. 967 : 18 C. W. N. 884,

(h) *Amrita Lal Basack v. Secretary of State*, 22 I. C. 78.

said to be arbitrary in as much as it is not always easy to give the precise reasoning in cases of this kind. The rent of bustee land is often no criterion for ascertaining the market-value of land, (i).

Valuation of lands with buildings ;—In *Rathnamanjari v. Secy. of State* (j) it was contended that the land on which the buildings stood should be valued separately and that the buildings should also be valued separately and the two added together to get the total market-value of the plots with the building standing thereon. Their Lordships held : “That is hardly the way in which property consisting of a house and a garden is valued in the market. A plot consisting of a house and a garden is much more satisfactorily valued at twenty years’ purchase by capitalising the rental, in the absence of other evidence which would give a more satisfactory value.” In (k) the objection taken was that the value of the land should have been ascertained separately and compensation awarded separately. The Court held : “In the present case there is no evidence worthy of the name of the value of the land or of similar land in the vicinity, and it would be impossible for this court to assess such value. Apart from this, when a building and its appurtenant land cannot be valued separately market-value must be determined on the net rental value and when that is done the building cannot be separated from the land, for it is impossible to say what proportion of the rent is fixed on the building and what on the land.” This is in accordance with the view taken in (l) and (m).

Separate valuation of building tenancy and Art. 133 (1) (a) of the Constitution :—When a separate valuation of a building tenancy is required, the landlord’s interest and his right of reversion shall have to be considered. Generally the principle followed is, by deducting the capitalised value of the landlords’ right of reversion at the reasonable figure of twenty years’ purchase from the value of the property. This principle is also adopted for the purpose Art. 133 (1) (a) of the Constitution for leave to appeal to Supreme Court in connection with ejectment suit. (m-1).

Valuation must not be based upon circumstances variable in nature :—In calculating the amount of compensation to be awarded upon acquisition of lands with building thereon the rental should be the basis of calculation, so that after arriving at the net rental what has to be ascertained is the rate of return investors in this class of property expect, for that serves to determine the number of years’ purchase it is proper to allow, after giving due weight to any special conditions that may affect the property advantageously or otherwise. As to the contention that the property was

(i) *Secretary of State v. Altaf Hossain*, 103 I. C. 714 : 1927 A. I. R. (C) 827.

(j) *Rathnamanjari v. Secy. of State*, 44 M.L.J. 132 : 72 I.C. 214 : 1923 A.I.R. (M) 332.

(k) *Kathissabi v. The Revenue Divisional Officer, Calicut*, 1923 M. W. N. 54 ; 70 I. C. 82 : 1923 A. I. R. (M) 31.

(l) *Government of Bombay v. Karim Tar Mahomed*, 33 Bom. 325.

(m) *Premchand Baral v. Collector of Calcutta*, 2 Cal. 103.

(m-1) *Ramric Lal Saha v. Sachindra Narayan Roy*, A. I. R, 1968 Cal. 316 and *Pandit Sri Lakshmikanta Jha v. Nilkanta Ghoshal* 75 C. W. N. 1004 (D. B.).

at the date of the declaration capable of fetching a higher rental which was apparent from the fact that the rents of the property had been steadily rising for 16 years previous, it was held, that though for the purpose of the enquiry it was legitimate to have regard to the past history of the rental, it could not be taken for granted that enhancement would continue to be possible for ever, and still less there was such a certainty of this as to make it a basis for fixing a higher purchase price, (n).

It has long been the practice of the courts in this country to calculate the profits from any form of landed property as equal to the profits made by investing money in gilt-edged securities. In arriving at the proper value of a site with building thereon for the purpose of awarding compensation under the L. A. Act, the compulsory acquisition being at a time when interest obtainable on Government securities is 3 p. c., the proper and correct course would be to capitalize the annual rental value of the property at $33\frac{1}{3}$ years' purchase, (o). The proper method of valuation to be adopted in a case of compulsory acquisition relating to a house and ground situated in a municipality fetching regular income is to assess the value on the basis of capitalisation of the net annual income. The number of years' purchase to be adopted for capitalisation has to be arrived at by taking into account the interest yielded by the Government securities at the time of the notification under section 4 (1) of the L. A. Act. Where the gilt-edged securities were carrying rate of 3 p.c. at the time of the notification under section 4 (1) of the Act, the annual rental value must be capitalised at $33\frac{1}{3}$ rd years' purchase' (p).

Where in a case of compulsory acquisition of lands it is not possible to ascertain the value of the lands acquired except by reference to transactions relating to lands with building on them in the neighbourhood, it is permissible to separate the value of land itself from the value of the buildings on the land for the purpose of comparison with sale and other disposition of property in the neighbourhood, (q).

Valuation of antiquities, ancient monuments, granites and gravels :—
The Government having commenced proceedings to acquire a plot of land containing granite quarries besides ancient temples and sculpture, reference was made to the District Judge as to the amount of compensation payable to persons interested in the land. It was held, (1) with regard to the nature of the property that only the value of the stone quarries as yielding profit could form the subject of assessment, and the value of antiquities could not, for, under the circumstances, no market-value could be assigned to the antiquities ; (2) the right course of proceeding was to estimate the rent at which possibly the whole plot might be leased, on the basis of how much rent a portion of the plot when leased for quarries had in fact

(n) *Raghunath Das Gopal Das v. Secretary of State*, 29 Bom. 514 : 7 Bom. L. R. 569.

(o) *L. A. Officer, Calicut v. Subbarao*, 1941 M. W. N. 718 : 54 L. W. 724 : (1941) 2 M. L. J. 75 : 1941 A. I. R. (M) 684 : 197 I. C. 402.

(p) *Radha Krishna Chettair v. The Province of Madras*, I. L. R. (1949) Mad. 497 : A. I. R. 1949 (Mad.) 171.

(q) *Land Acquisition Officer v. Jivanlal*, 47 Bom. L. R. 874 ; 223 I. C. 465 : A. I. R. (1946) Bom. 155.

been obtained for the zamindar ; (3) to calculate the purchase money at 25 years of such rent ; (4) though quarrymen had been employed and had earned money on the plot, they were not interested in it in the sense intended by the Act and their earnings in which the zamindar was not interested could not enter into the question of compensation and increase the award, (r).

Section 21 of the Ancient Monuments Preservation Act (VII of 1904) applies to the purchases of moveables, antiquities or relics and the compensation which may have to be paid for incidental damage caused by the removal or protection of such object of historical interest or art value. In ascertaining the market-value of such movable antiquities and the amount of compensation to be paid to adjacent owners for acts done under the Act, such acts being indicated and by implication defined in sec. 20, only the provisions of the L. A. Act enumerated in sec. 21 are to guide the Court. Where, however, Government is actually acquiring immovable property under section 10 of the Ancient Monuments Preservation Act, the owners of the property have the full rights which they would have under the L. A. Act, including the right to appeal to the High Court from an award of the Court provided by sec. 54 of the latter Act, (s). Government had been taking gravel from a certain piece of land and paid the owner at a certain specified rate : It was finally decided to acquire the land and compensation was assessed by the District Judge at twenty times the average income actually obtained by the owner from lands of similar description and area. The owner claimed compensation for the entire amount of gravel contained in the land at the rate at which the Government had been paying. It was held that the method of assessment adopted by the District Judge was correct, (t).

Land of Toka tenure, situated at a hill on the north of Bombay was compulsorily acquired by the Government of Bombay in pursuance of a notification. The annual rent payable to the Government was Rs. 88-5 p. But Government had right to increase the assessment in the year 1929-30 to the rate of 4 per cent on the value of the land. In the proceedings before the L. A. Officer the claimant and the Government proceeded to value the property on the assumption that the land was in the quarry region could be carried on to considerable depth. Accordingly the L. A. Officer calculated the value of the land on hypothetical estimates of the value of the marginal land to be left by the claimant and the value of the moorum and stone, the said values being written back for a certain number of years at a certain percentage. The matter being referred to the High Court at the instance of the claimant, the trial judge came to the conclusion that in view of the experiments made on the land it did not appear that as business proposition the land in

(r) *Secretary of State v. Shanmugarya Mudaliar*, 16 M. 369.

(s) *Vishnu Narayan Vaidya v. The District Deputy Collector, Kolaba*, 42 B. 100 ; 43 I. C. 480.

(t) *Birbar Narayan Chandra v. Collector of Cuttack*, 2 Pat. L. J. 147 : 38 I. C. 14.

reference would be used as a quarry but that as both parties had since the date of notification proceeded on the valuation of the property as a quarry the basis of valuation should not be rejected. He varied the estimate of the L. A. Officer, however, and awarded the claimant Rs. 42,969-12-0 which included an allowance for the flat land when levelled. On appeal by the Government it was held, setting aside the award of the trial judge, that as the evidence showed that the land could not be valued on a quarrying basis and that the claimant has failed to establish that a purchaser taking into consideration the potentialities of the land whether for building or quarrying purposes would be prepared to pay anything more than 7/8/- a square yard according to which the value of the land would not exceed the estimate of the acquiring officer, such estimate must be accepted as correct, (u). In valuing the potentialities of the land for quarrying purpose a Court should avoid, as far as possible, hypothetical speculation and rely on admitted and proved facts, (v).

Valuation by capitalisation :—In calculating the market-value of land by capitalising its annual net profit, it depends on the circumstances of each case at what rate the property should be capitalised. After arriving at the net rental what has to be ascertained is the return investors in the class of property expect, for that serves to determine the number of years' purchase it is proposed to allow, after giving due weight to any special conditions that may affect the property, advantageous or otherwise. The rate per cent depends upon various circumstances especially upon the market and security. The market is ruled by supply and demand and demand depends upon the amount of money available for investment in the particular kind of property or number of competitors for the particular kind of property. It is obvious that rate of interest also depends upon security. The greater the security the smaller is the rate of interest. A man is content with 3 or $3\frac{1}{2}$ per cent in case of G. P. Notes because the risk is infinitely less and the investor knows that he can turn his stock into money at short notice, if it is found necessary to do so. It, therefore, follows that money invested in well-secured ground rents in a commercial quarter yield a lower rate of interest than money invested in a residential quarter of a town. The function of the court in awarding compensation under the L. A. Act, is to ascertain the market-value of the land at the date of notification under section 4(1). The number of years' purchase which would be adopted in a given case must vary with individual cases and must be decided upon the materials placed before the court. Where definite material is not forthcoming either in the shape of sales of neighbouring lands at or about the date of notification or otherwise and the court can only proceed to do the best it can under the circumstances. In the absence of evidence, the twenty years' purchase should be adopted

(u) *Government of Bombay v. N. A. Moss*, 47 Bom. 218.

(v) *L. A. Officer, Bandrav v. Gulam Hossain Ahmed Gomajee*, 87 I. C. 581 : (1925) A. I. R. (B) 433 : 96 I. C. 284 ; *Daya Khushal v. The Assistant Collector, Surat*, 38 Bom. 37 : 15 Bom. L. R. 845.

as basis for fixing the market-value and that is the rule adopted ordinarily in practice, (w).

Years' purchase :—In valuing land or an interest in land for purposes of land acquisition proceedings, the rule as to number of years' purchase is not a theoretical or legal rule, but depends upon economic factors, such as the prevailing rate of interest in money investments. In determining the value of melwaram interest in zemindari land acquired for the public purposes the method to be adopted should be as follows : It is necessary to start with one known fact—the gross income of the zemindar from the land which is being acquired. The next step should be the ascertainment of the net income, by roughly deducting a proportion of the peishkush payable by the Zemindar to Government and also a proportion of cost of revenue collection and administration 10 *per cent* would be fair and equitable deduction. The net annual revenue should then be capitalised by computing the number of years' purchase. This must depend upon the rate of interest prevailing on gilt-edged securities at the time of the acquisition, that is, on the date of notification under s. 4 of L. A. Act. When that prevailing rate of interest is only $3\frac{1}{2}$ *per cent*, 30 years' purchase may be adopted as the proper estimate of the capital value of the melwaram. Finally a further 15 *per cent* should be added as compensation for compulsory acquisition, (x). It is only a full owner of land who normally gets compensation on the basis of 20 years' purchase. There is no reason why a person who holds a lease should get compensation on the same basis. What he would get would depend upon the terms of the lease and the length of time that he might be expected to remain in possession of the property. (y).

In case of perpetual incomes, as those derived from freehold property, the years' purchase equals 100 divided by the rate *per cent*. Thus if a person invests a sum at 5 *per cent* interest and the yield is Rs. 50 *per annum* the sum invested is obviously Rs. 1,000 or $50 \times \frac{100}{5}$. The Y. P. is $\frac{100}{5}$ i.e., 20. The mere fact that the High Court has in a particular case given 16 years' purchase to a person claiming compensation under the L. A. Act is not sufficient basis on which as a matter of law and principle, the High Court should give 16 years' purchase in all such cases. The matter depends entirely upon the circumstances of each case, (a). A return of 12 *per cent per annum* may be taken to be fair and reasonable for an investment of money in house property in a cantonment area. Compensation payable in respect of such property can be calculated on that basis, (b).

(w) *Sub-Collector Rajahmundry v. Parthasarathi Naidu*, I. L. R. (1943) Mad. 127 : 206 I. C. 140 : 55 L. W. 763 : (1942) M. L. J. 512 : A. I. R. (1942) Mad. 739. *Sheo Nath Misra v. U. P. Govt.* (1961) A. L. J. 340.

(x) *Collector of Krishna v. Zamindar of Challapalli*, 1937 M. W. N. 1018 : 46 L. W. 877 : (1937) 2 M. L. J. 744.

(y) *Radhacharan v. Secretary of State*, 1943 A. W. R. 19 : 1943 A. L. J. 87 : 1943 A. L. W. 340 : (1943) O. W. N. 208 : 207 I. C. 289 : A. I. R. (1943) All. 238.

(a) *Secretary of State v. Sital Prosad*, 19 P. L. T. 774 : 175 I. C. 1007 : 1938 A. I. R. (P) 226.

(b) *Damodar Das v. Secretary of State*, 1938 A. L. J. 1171 : 1938 A. W. R. (H. C.) 811. I. L. R. 1938 A. 994.

In a Hyderabad Case (c), where a house and a licensed liquor shop therein were mortgaged for Rs. 60/- out of which Rs. 40/- was in lieu of the right to work the shop and the house was acquired, it has been held that the rent of the house should be taken at Rs. 60/- and compensation was to be awarded accordingly by deducting 1/4th from the annual rent and capitalising at $33\frac{1}{3}$ years' purchase, (d).

In an Allahabad Case viz. *R. S. Anand Behari Lal v. U. P. Govt.* (d¹) it has been held that when land was acquired at a time when it was already subject to the same restrictions and limitations as those imposed by the notification it could not be said that there was any fall in the value owing to restrictions and limitations being imposed by the new notification. The best method of valuation would be to ascertain the income and multiply it according to the number of years' purchase which the court considers appropriate.

Compensation in respect of wet and dry lands :—For fixing compensation in the case of wet lands capitalisation of the net annual income of twenty years' purchase is the proper method to be adopted. There is no reason to adopt a different rule in case of lands which were ordinarily dry lands at the time of notification under s. 4(I) of the Act though they had a potential value as building sites, (e).

Valuation of brick-fields :—Tribunals assessing compensation must take into account not only the present purpose to which the land is applied but also any other more beneficial purpose to which in the course of events, it might within reasonable period be applied, and just as an owner might do if he were bargaining with a purchaser in the market. Where it appeared that the land acquired could not profitably be used as an independent brick-field, but there were trustworthy evidence to show that if the acquired lands were thrown into the market, adjoining brick-field owners would have come forward to purchase them to take lease of them for inclusion in their brick-fields, it was held that the Court was justified in assessing in value of the lands as brick-field, (f).

In (g) it was urged on behalf of the claimant that he is entitled to compensation on the basis of the profit which he was likely to make by converting clay on his land into bricks and selling brick in the open market. This contention was held to be unsound, and it was held : "It is undoubtedly true that in awarding compensation, any and every element

(c) *Government of Hyderabad v. Govinda Bal*, A. I. R. 1959 Hyd. 70 : I. L. R. 1951 Hyd. 216.

(d) A. I. R. 1954 Bom. 323 and *Rajsekhar v. Chairman City Improvement Trust Board, Mysore*, A. I. R. 1957 Mys. 20 ; *Ramasetty Durgiah v. Government*, I.L.R. (1956) Hyd. 38 : A. I. R. 1956 Hyd. 175. *Additional Special L. A. Officer v. Shanta Ram*, A. I. R. 1960 Bom. 408 distinguishing I. L. R. 33, Bom. 23 and A. I. R. 1938 Cal. 75.

(d¹) *R. S. Anand Behari Lal v. U. P. Govt.*, 1955 N. U. C. (All.) 2769.

(e) *Sri Lakshmi Narasimha Devaru v. Revenue Divisional Officer, Mangalore*, 62 L.W. 140 : 1949 M. W. N. 131 : (1949) M. L. J. 283 : A. I. R. 1949 Mad. 902.

(f) *Mohini Mohan Banerji v. Secretary of State*, 25 C. W. N. 1002.

(g) *Collector of Chingleput v. Kadir*, 50 M. L. J. 566 : 95 I. C. 883 : (1926) A. I. R. (M) 732.

of value which the land possesses to the owner must be taken into consideration in so far as it increases the value to him, (h). In other words, not the land alone but the land with all its potentialities must be considered in assessing the value, (i). There is no authority, however, for holding that the claimant is entitled in such circumstances as exist in the *hypothetical* profit which in certain events he is likely to make. It is impossible to accede to the contention that the claimant must be awarded compensation on the basis of loss of profit. The rule applicable to cases of this kind is clearly laid down. 'The true measure of compensation' as Lord Atkinson, in this judgement says, 'is the price the minerals would fetch as an when won and raised less the cost of working the mine winning and raising them.' The claimant will undoubtedly be entitled to the value of the total quantity of the clay that can be raised on the spot, (j)."

In assessing the value of a plot of land in the land acquisition proceedings, the fact that there is a reasonable probability of the plot of land being used as a brick-field within a reasonable time had it not been for the acquisition, is an important element for consideration, (k).

Valuation of lands subject to restricted user :—A question was raised as to the manner in which valuation is to be made of land acquired when it is subject to restrictions as to use, for instance, land used as church-yard or a grave-yard. In the first case it was held by the Court of Common Pleas that the value was to be determined as if the land belonged to the owner, discharged of the use to it which had been devoted, Sir Thomas Wilde C. J. observing that "by the appropriation of property to ecclesiastical or spiritual purposes, the owner voluntarily sacrifices the pecuniary value of the property so appropriated but he makes that sacrifice to obtain an object which he estimates of greater value than pecuniary value ; but when that object is entirely withdrawn from him, by the application of the property against his will to secular uses and those use connected with pecuniary profit, it does not seem consistent with justice to estimate the value to the owner upon the footing of its irrevocable appropriation to those spiritual purposes from which it has already been withdrawn," (l). In the second case, (m), it was held that when land subject to restriction as to its use is taken under compulsory powers, the amount of compensation payable to the person interested therein is to be assessed with reference to its value to the person taking it ; in other words, that when lands used as a burial ground is acquired, it has to be valued not as secularised by the

(h) *Re Lucas v. Chesterfield Gas and Water Board*, 1909, 1 K. B. 16.

(i) *Commissioners of Inland Revenue v. Glasgow and South Western Railway Company*, (1887) 12 A. C. 315.

(j) *Eden v. N. W. Railway Company*, (1907) A. C. 400.

(k) *Mohini Mohan Banerjee v. Secretary of State*, 31, C. W. N. 382 : 101 I. C. 537 : 1927 A. I. R. (Cal.) 298.

(l) *Hilcoat v. Archbishop of Canterbury and York*, (1850) 10 C. B. 327 : *Stebbing v. Metropolitan Board of Works*, (1870) L. R. 6 Q. B. 37. *Re City and South London Railway Company*, (1902), 18 T. L. R. 612 ; (1903) 19 T. L. R. 363.

(m) *Stebbing v. Metropolitan Board of Works*, (1870) L. R. 6 Q. B. 37.

acquisition but as consecrated and devoted to the purpose of a burial ground. This view is based on the same principle as underlies the decision of the Judicial Committee which is founded upon a construction of the provisions of the Land Acquisition Act. In the third, case, (o) (appeal) the Court of Appeal went back to the view taken by Wild C. J. in (p) and expressed their preference for it over the principle of *Stebbing's Case* (q). The three cases just referred to, therefore, are authorities on the question of the principle of valuation subject to restriction as to use. There is a well marked distinction between the class of cases where sterilization is so permanently attached to ownership as to deprive the owner of all claim to compensation and the class of cases where the land, though it is subject to restrictions as to use, has still some value to the person interested in the property and who is consequently entitled to the compensation assessed on this principle, (r).

Valuation of common passage :—Certain premises abutting in a common passage with an interest in the common passage were acquired. The owners of the premises were awarded compensation at a higher rate as the existence of the common passage was taken into consideration in valuing the premisses. The passage land was owned by the same owners. Subsequently by the same notification the passage land was acquired but no compensation was awarded to the owners of the premises and the common passage in respect of the acquisition. A reference was made by the owners under s. 18, L. A. Act. The Tribunal made an award in favour of the claimant determining the value of the passage land at one-fourth the rate of the surrounding land. In appeal it was held that by the acquisition of the premises with interest in the common passage, it was not intended that the entire proprietary interest of the owners in the common passage including all the rights in the sub-soil were acquired, and the fact that the adjacent land had received a higher valuation for the existence of the passage as a means of access could not lead to the conclusion that the land covered by the passage had lost its value to the owners. It was finally held that as the passage was a private passage appertaining to the premises providing access to all parts of it, there was no justification for two separate acquisitions, as were done in the case and the passage could very well be included in the acquisition of the whole site. It was also held that the passage land was bound to receive a lesser valuation by reason of the principle of valuation of land subjected to restriction as to user and that valuation of one-fourth rate given for the surrounding land was correct, (s).

Valuation of land subject to easement :—The L. A. Act does not lay down any hard and fast rule as to the mode of valuation ; the court may either value the land including all interest therein and then apportion the amount between the several interests or value the interests separately and

(o) *Re. City and South London Railway Co.*, (1902) 18 T. L. R. 612 ; (1903) 19 T. L. R. 363.

(p) *Hilcoat v. Archbishop of Canterbury and York*. (1850) 10 C. B. 327.

(q) *Stebbing v. Metropolitan Board of Works*, 1870 L. R. 6 Q. B. 37.

(r) *Chairman of the Howrah Municipality v. Khetra Krishna Mitra*, 4 C.L.J. 343 (352).

(s) *Secretary of State v. Dulali Bala Debi*, 176, I. C. 847 : 1938 A. I. R. (C) 75.

ascertain the total by addition. When Government is seeking to acquire land which is subject to an easement it has got to pay compensation to the land owner i. e., the owner of the servient tenement and it has also got to pay compensation to the owner of the easement. It is obvious that the value of the easement bears no relation to the value of the servient tenement. If it happens that the easement is of no great value, then Government may acquire both servient tenement and the easement at a price which is less than the market value of the land free from the easement. But all that means that the value of the whole is greater than combined value of the parts and the increased value arising from the union of interests necessarily belongs to Government in whose hands the union takes place, (t).

When a tenement subject to an easement is acquired under the L. A. Act, the owner of the easement right is entitled to be paid the value of that right and the owner of the acquired premises is not entitled to the full market value thereof in an unburdened state. But to such value as diminished by the existence of the easement i.e., in determining the amount payable to the owner of the servient tenement a certain sum should be deducted from what would be its market value if no burden of easement existed. But the value of the easement right to the owner thereof is not necessarily the same as the amount by which the full market value of the servient tenement, as free from the easement is reduced ; when the value of the easement right is more than the sum deducted from the full market value of the servient tenement the excess must be paid by the Government to owner of the dominant tenement. In a case where the Collector first determined the value of the servient tenement as free from the easement then determined the value of the easement right and gave that value to the owner of the dominant tenement and the balance to the owner of the servient tenement, if the value of easement right is found to be more than the amount awarded by the Collector but less than the amount by which the easement is found to have depreciated the value of the servient tenement, it has to be decided, having regard to the provisions of sec. 25 of the L. A. Act, whether the excess over the Collector's award is to be borne wholly by the Government or part of it should be deducted from the Collector's award to the servient tenement and paid over to the owner of the easement right. A reference at the instance of the owner of easement right should be heard by the Court as a valuation case and not as an apportionment case and notice must be given to the collector as much as to the owner of the servient tenement acquired, (u).

Market-value of property subject to a permanent lease :—In *Rakhal Chandra Basack vs. Secy. of State*, (v) the lease of plot of land with a house therein recited that the lessee required it for the purposes of a college and school and the terms were that the lessors would not be

(t) *Government of Bombay v. C. S. and M. Co.*, I. L. R. 1942, Bom. 403 : 44 Bom. L. R. 57 : 200 I. C. 661 : A. I. R. 1942 (B) 105.

(u) *Bishnu Prasad Chunder v. Benoy Krishna Rohatgi*, I. L. R. (1945) I. Cal. 589 : 49 C. W. N. 203 : 79 C. L. J. 105 : A. I. R. (1945) (C) 142.

(v) *Rakhal Chandra Basak v. Secretary of State*, 33 C. W. N. 669 (P. C.),

entitled to take hold of the property unless the lessee gave it up of his own accord, that the latter would be entitled to keep it as long as he liked and that he would not be entitled to give it up before he acquired a house of his own for the institution. After sometime the lessee created a trust and conveyed the lease and certain other properties to trustees who acquired one adjoining plot of land and erected thereon a new building for the college, the subject-matter of the lease being converted to a residential establishment attached thereto. In that state of things, the legislature desiring to put the college on a more permanent basis passed an Act by which the property comprised in the lease was to vest in and to be held by the Governor-in-Council, but before the Act actually came into force, the Government determined to acquire* that freehold interest in the land and the question arose what compensation was to be paid to lessors. The High Court held that the lease was terminable only at the option of the lessee and as by reason of the Act the lessor's chances of receiving back the property had been reduced to nil, they were entitled to a sum arrived at by capitalising the monthly rent. Before their Lordships of the Judicial Committee, it was contended that the lease gave the lessee a right to remain on the land only so long as the college was actually carried on the site demised and as that was no longer being done the lessors' interest was to be valued as a fee simple in possession. Their Lordships of the Privy Council held that the High Court had correctly assessed the amount of compensation. The lease did not bear the construction that the lessee was entitled to be in possession only so long as he carried on a college on the property and even if it did, the mere fact that the physical site of the college building was now on an adjoining piece of land that the property leased was being used for the purposes of the college other than actual teaching in a class room was not cessation of the use of the land for the purposes of the college.

Market-value of property subject to a temporary lease :—In calculating the price of a property which is subject to a lease the rent derived by the landlord should be taken into consideration in arriving at the value of the property. Other matters may also be considered having regard to the circumstances of the case. The value to the seller of the property in its actual condition at the time of the sale should be taken into consideration in arriving at the market-value of the property it must be considered what the owner was actually receiving from the property and what would be the amount of loss to him by the acquisition, (w). Where compensation for lands compulsorily acquired is based on rent actually received regard must be had to the question whether the lease was one for a considerable period and the rent received was an amount which was likely to be received for a lengthy period, (x).

(w) *Government of Bombay v. Merwanji Muncherji Cama*, 10 Bom. L. R. 907 ; *Secretary of State v. Sanmugarya Mudaliar*, 20 I. A. 80 (88) ; *Sreemutty Swarnamanjuri Dassi v. Secretary of State*, 55 C. 994 : 32 C. W. N. 421 : 49 C. L. J. 54 : 112, I. C. 706 : 1928 A. I. R. (C) 522.

(x) *Ismailji Mahomedalli Bohori v. The Dist. Deputy Collector, Nasik*, 34 Bom. L. R. 1457 ; 141 I. C. 352 ; 1933 A. I. R. (Bom.) 37,

A lease under which certain property which was acquired under the L. A. Act was held, contained the following clause: "That if the lessee shall be desirous of taking a renewed lease of the said land for the further term of thirty years from the expiration of the said term hereby granted and on such desire shall, prior to the expiration of such last mentioned term, give to the lessor three calendar months' previous notice in writing and shall pay the rent hereby reserved and observe and perform the several covenants and conditions herein contained and on the part of the lessee to be observed and performed up to the expiration of the said term hereby granted, the lessor will, upon the request and at the expense and upon his signing and delivering to the lessor a counterpart thereof sign and deliver to the lessee, a renewed lease of the said piece of land for a further term of thirty years at a rent to be fixed by the lessor but which shall not be less than the highest rate at which land revenue is assessed on lands in the neighbourhood and under subject to similar covenants and provisions or such of them as shall be then subsisting or capable of taking effect." It was held that the right under the above said clause to have the lease renewed on its expiration, was too hypothetical to be of any commercial value, (y). But this case has been distinguished in AIR 1958 Cal. 56 (z) wherein the question of compensation arose under this section read with Calcutta Improvement Act (Act 5 of 1911) in respect of leasehold with option of renewal. It was held "the lessee is to be compensated for the loss of rights and advantages under the lease by reason of the acquisition. The option of renewal is undoubtedly one of such rights and its loss has to be taken into account in assessing the lessee's portion of the compensation money."

Where property has been leased for a long period and the rate of rent is increased once in certain number of years, and such property is acquired under the L. A. Act, it is very difficult for the Court to come to a definite conclusion as regards the valuation to be put on the interest of the landlord so as to apportion the compensation equitably. In the absence of any direct evidence as to what a willing purchaser would pay for the interest of the landlord in such a case, the apportionment can be made only in a rough and ready way, (a). Where at the time of the issue of notification under section 4 a person has a lessee's interest in the land sought to be acquired, (he being a lessee under a lease from Government for 99 years), together with the prospect of converting the land into a ryotwari tenure at the end of the period of lease, and there is no reason to believe that the Government would not grant the lessee a ryotwari tenure at the end of his period or during it if he applied therefor, the market-value of his interest for the purpose of assessing compensation should be based on all the rights which the lessee has and on his potential right. If the holding of the land under a ryotwari tenure had a value that value must increase the market-value of the

(y) *W. F. Noyce v. Collector of Rangoon*, 6 Bur. L. J. 91 : 104 I. C. 373 : 1927 A. I. R. (R) 246.

(z) *Santosh Kumar Dhar v. Nanda Kishore Mallick*, A. I. R. 1958 Cal. 56.

(a) *K. S. Banerjee v. Jotindra Nath Pal*, 108 I. C. 253 : 1928 A. I. R. Cal. 475.

lessee's interest and that factor must therefore be considered in fixing the value of the lessee's right in the land, (b).

Date of assessment and notice of termination of tenancy :—In *Square Group v. Rowton Houses Ltd.* (c) it was held considering all the previous decision that when compensation for compulsory acquisition was to be assessed, that the date of service of the notice to treat was the appropriate date by reference to which compensation should be assessed in case of leasehold agreement having option to terminate the tenancy by giving notice.

If by agreement a lessor was given option to purchase structures erected by the Government as lessee on termination of lease and land was acquired before termination of lease, the lessor is not entitled to anything in respect of structures, (d).

Agreement as to valuation on rental basis :—Where there is an agreement and a person claiming compensation under the L. A. Act that the claimant would get the price of the holding calculated on a rental basis at a certain sum per month plus the statutory allowance, the price is to be calculated on the net value to the claimant of the property and such net value can be arrived at only after the usual deduction for cess and ground rents, (e).

Valuation of structures :—It is often necessary for purposes of compensation to form an estimate of the cost of erecting a building similar to an existing building at the date of publication of the notification under section 4. In the case of bungalow which has been let out for rent, the rental value need not necessarily be taken as the basis of assessment. The cost of land and building may fairly be taken into consideration where the land being already the property of Government, only the buildings standing thereon are sought to be acquired and the latter are valued for the purpose of compensation by the contractor's method i. e., by ascertaining the cost of reproducing the building at the present time and then allowing for depreciation on account of age and cost of repairs, no mistake of principle is committed, (f). Lord Macmillan in delivering the judgement of their Lordships of the Judicial Committee in *Hari Chand v. Secretary of State* (g). observed "The subject to be valued being a building apart from the site, the principle of fixing value by ascertaining the cost of reproducing the building at the present time and then allowing for depreciation in considerations of the age of the building and for the cost of such repairs as might be required apart

(b) *Parasuram Byas v. Sub-Collector, Rajahmundry*, I. L. R. (1942) Mad. 831 : (1942) M. W. N. 457 : 55 L. W. 468 : (1942) 2 M. L. J. 218 : 203 I. C. 554 : A. I. R. (1942) Mad. 596. *Bihar Mines Ltd. v. Union of India* (1967) I. S. C. R. 707 : (1967) II S. C.-J. 797.

(c) *Square Group Re-inforcement Co. (London) Ltd. v. Rowton Houses Ltd.*, (1966) 3 All. E. R. 996.

(d) *Tribeni Devi v. Collector, Ranchi*, 1966 B. L. J. R. 834.

(e) *Secretary of State v. Sital Prasad*, 19 P. L. T. 774 : 175 I. C. 1007 : 1938 A. I. R. (P) 266.

(f) *Revenue Divisional Officer Trichinopoly v. Srinivas Iyengar*, 1937 M. W. N. 1006.

(g) *Hari Chand v. Secretary of State*, 20 P. L. T. 739 : 1939 A. L. J. 859 : 44 C. W. N. 5 : 70 C. L. J. 334 : 50 L. W. 496 : 1939 2 M. L. J. 722 : 1939 O. W. N. 760 : 183 I. C. 328 : 1939 A. I. R. (P. C.) 235.

from depreciation, is quite a well-known and recognised method of valuing building for the purpose of compensation." In *Secy. of State v. Sri Narayan Khanna (h)* it has been laid down that the proper measure of compensation for the compulsorily acquired building, standing on land belonging to another and apart from such land, is the cost of reproducing the building at the time of the acquisition, less depreciation in consideration of the age of the building and the cost of necessary repairs. When such a building stands on land held under a cantonment tenure and has been leased to the Government themselves, the compensation cannot be assessed on a rental basis, in as much as the lease must be held to be subject to the right of Government to resume the land at any time, which is an incidence of cantonment tenure. The best method of obtaining an accurate estimate is by taking out from detailed plans the quantities of the various kinds of material and labour and valuing each item separately. A very fair estimate may, however, be made by pricing per square foot of floor area or per unit of accommodation or by cubing, (h-1).

Valuation of architectural structures :—When a land is acquired which contains structures of architectural beauty the value of those structures cannot be assessed from that standpoint but is assessed only with regard to the materials used. In *Secy. of State v. Mehraj Din (i)* the Court held : "There is no doubt that the walls from an architectural point of view represent best work of the Moghal Emperors of India who were famous all over the world as great builders. The value of the walls from the point of view of the archaeologist and the historian is very great, but this cannot be calculated in money. For our purposes it is only necessary to consider them as thoroughly good walls which serve the object of surrounding the garden and the mausoleum and for the purpose of assessment they should be treated as such. In my judgment, the walls and gates shall be treated as first class boundary walls."

The following specifications of an imaginary building site are taken to illustrate the principle of valuation "at the rate per square foot of floor area" basis at pre-war rates :—

The outer dimension of the structure is 17'—6" x 9'—11"

The plinth area, therefore, is 173' 6 sq. ft. i. e., say 174 sq. ft.

The size of the room is (inside measurement)=9'—0" x 8'—3" and varendah 8'—3" x 6'—3"

The thickness of the walls (a) in foundation 1'—8" ; (b) in plinth 1'—3" ; (c) in superstructure 10". The room is plastered inside and outside with two coats with washing complete. The floor is terraced with $\frac{1}{2}$ " cement plastering. There are two doors, 5'—0" x 2'—6" each and one window 2'—0" x 1'—6". The roof is of flat and nurrial tiles over strong bamboo frame and sal scantling. The height of the ridge is 11'—6". The

(h) *Secretary of State v. Sri Narain Khanna*, 46 C. W. N. 921 (P. C.) : I. L. R. (1942), All. 601 : 44 Bom. L. R. 788 : 1942 P. W. N. 210 : 1942 A. L. J. 380 : 201 I. C. 193 : (1942) 2 M. L. J. 289 : A. I. R. (1942) P. C. 38.

(h-1) *Raghuvans Narain Singh v. U. P. Government*, (1967) (I) S. C. R. 489 : 1967 (II) S. C. J. 214.

(i) *Secy. of State v. Mehraj Din*, 1933 A. I. R. (Lah.) 948.

walls are constructed with 1st and 2nd class bazar bricks (10" x 5" x 3") with cinder mortar.

Now if the details are added, the plinth area rate i. e., the rate per square foot of floor area will appear thus :

No.	Description	Quantity	Rate	Amount	Remarks
1.	Earth works in excavation	358 c. ft.	Rs. 8/- per 1000 c. ft.	2-13-9	within a 100 ft. lead.
2.	Do. in filling	358 c. ft.	-do-	2-13-9	-do-
*3.	Brick work	702 c. ft.	Rs. 35/- per 100 c. ft.	245-11-3	1 and 2 class brick with cinder & lime mortar.
4.	Plastering with sand or cinder	973 sq. ft.	2/6 per 100 sq. ft.	23-1-9	Sand or cinder and lime in the proportion of 3 : 1.
5.	White washing 2 coats	973 sq. ft.	/5/ per 100 sq. ft.	3-0-9	
6.	Terraced flooring	124 sq. ft.	{ 13/8 per 100 sq. ft.	16-11-9	
7.	$\frac{1}{2}$ " cement plastering	124 sq. ft.	{ 4/12 per 100 sq. ft.	5-14-3	
8.	Wood work	28 sq. ft.	-/8/per sq. ft.	14-0-0	
9.	Nurrial tile roofing on bamboo frame with sal scantling	174 sq. ft.	-/4/-per sq. ft.	43-8-0	40% above floor area.
Total Rs.				357-11-3	

But the plinth area $17' - 6" \times 9' - 11" = 174$ sq. ft.

Therefore the rate per sq. ft. = $\frac{357-11-3}{174} = 2-0-3.2$ say Rs. 2/- per sq. ft.

The prices of mouldings, pillars, platforms, vats, ceiling—planks, dados and so on, are to be considered, where the occasion so demands.

*The rate for 100 c. ft. of brick work with cinder and lime mortar in the proportion of 3 : 1 :—

Bricks (bazar 1st and 2nd class mixed).

1100 pieces @ 20/8 per 1000 ..	..	..	22 8 0
Cinder 27 c. ft. @ 24/- per 225 c. ft. ..	..	..	2 14 0
Lime (slaked) 9 c. ft. @ 85/- per 225 c. ft. ..	..	..	3 6 6
Labour, in foundation, plinth and superstructure, @ 5/- per 100 c. ft.			5 0 0
$\frac{1}{3}$ Head mason	}		
3 $\frac{1}{2}$ masons			
3 coolies		watering 1.5 per cent	0 8 0
4 women			
$\frac{1}{2}$ bhisty		scaffolding 1 per cent	0 5 6
			Rs. 34 10 0

say 35/- per 100 c. ft.

In a similar manner, the rates of wood roofing, $\frac{1}{4}$ " cement plastering etc., can be found out.

III. Expert opinion :—Land is not like ordinary goods the value of which can be fixed on inspection by a person who has knowledge of them. Its value is the result of various factors working in different ways and degrees, and they cannot be apprehended and estimated aright off-hand. The advantage of experience in the calculation of land lies in this, that the expert knows what factors should be considered, what information he should seek for, where he should seek it and how he should test it and apply it. But experience does not enable one to dispense with enquiry : and an honest and useful valuation cannot be made simply by visiting the land and picking up orally some casual and untested information or gossip which may be interested or one-sided. These conditions apply specially to land in or near large towns, (j). In addition to the evidence of sales the court can be guided by the opinion of surveyors. It is necessary, however, to distinguish opinion from argument. And the practice which has grown up in references under the Land Acquisition Act, of surveyors making long reports and providing copies to the other side before hearing, appears open to grave objection. A surveyor's opinion by itself is good evidence. What value the court will put on it depends entirely on the effect of cross-examination, but there is no reason why the witness should himself provide the material for his cross-examination. It will save the time of the court if a surveyor prepares a concise description of the property to be valued, but if he is a wise man he will add nothing more except his opinion of its value. If however he does give his reasons they must be based on facts and not on hypothesis, (s). The putting of written interrogatories to an expert witness for submission of written answers later on is an unusual procedure, (t).

Much reliance cannot be placed on the evidence of experts unless it is supported by or coincides with other evidence, (u). In assessing the value of land for purpose of land acquisition the opinion of experts is admissible in evidence but the value to be attached to such evidence depends upon the quality of evidence, (v). The opinion of experts as to the market-value of a land is evidence but its evidential value is not great, in as much as the value of the experts' opinion depends upon the facts on which it rests and the validity of the process by which the conclusion is reached, (w). Where the so-called expert "witness" as to value of land give no data in support of their opinions, their evidence should be rejected, (x). It has been said that although opinion of experts is evidence in such cases, its value is not great and it would not be possible to place reliance on this kind of evidence unless it is supported by or coincident with other evidence ; and where such evidence is not only supported by or coincident with the best evidence in the case,

(j) *Rajendra Nath Banerjee v. Secretary of State*, 32 C. 343.

(s) *In the Matter of Government of Bombay and Karim Tar Mohamed*, 33 B. 325 ; 10 Bom. L. R. 660 ; 3 I. C. 690.

(t) *Secretary of State v. Bhupati Nath Dev*, 68 C. L. J. 90.

(u) *Harish Chandra Neogy v. Secretary of State*, 11 C. W. N. 875.

(v) *Secretary of State v. Sarala Devi Choudhurani*, 5 L. 227 ; 79 I. C. 74 : (1926) A. I. R. (L) 548.

(w) *L. A. Officer v. Fakir Mohamed*, 143 I. C. 699 : 1933 A. I. R. (S) 124.

(x) *Pribhu Diyal v. Secy. of State*, 135 I. C. 183.

but there is much divergence or disagreement on material points between the evidence of the so-called experts, no reliance could be placed over it. Moreover, even experienced architects and municipal land-surveyors cannot be regarded as valuers or experts merely because in course of their business or duty they have on occasions to value some property here and there.

Conclusion :—From a consideration of the matters to be taken into consideration in determining the market-value of land as stated in the preceding pages, we come to the conclusion that the elements for consideration in determining the market-value of the land are the following ; namely, profits from the most advantageous disposition of land is one test for determining its market-price. The probable use of land in the most advantageous way in accordance with the use already made of neighbouring lands leads to speculative advance in prices to which regard should be paid. The utility of land is an element for consideration in estimating its value, that is, the utility which might be calculated by a prudent business man. The market-value of the acquired land is also to be ascertained from recent instances of sales in the same or in the adjoining localities, from the average rental of these and similar lands in the vicinity. General demands for land and the consequent reflex action on the price of all classes of land is a factor in the calculation of the market-value of land under acquisition, (z). In addition to the evidence of sales the court can be guided by opinions of surveyors, (a). The methods of valuation of land acquired under Act I of 1894 may be classified under three heads : (1) The opinion of the valuers or experts. (2) The price within a reasonable time in bonafide transactions of the purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. And (3) a number of years' purchase of the actual or immediately prospective profit from the lands acquired.

Combination of methods :—It is generally necessary to take two or all of the above methods of valuation in order to arrive at a fairly correct valuation. Exact valuation is practically impossible. The approximate market-value is all that can be aimed at, (b). To the same effect is the decision in (c), where Banerjee J., held that "there are three recognised modes of determining the market-value : first, by ascertaining the price or prices, at which the whole or any part or parts of the land acquired has or have been sold and purchased in recent years ; second, by ascertaining the net annual income of the property and by taking a certain number of years' purchase of that income depending upon the nature of that property ; and third, by ascertaining price at which the lands in the vicinity have been sold and purchased, and making all due allowance for the situation and the circumstances attending each particular sale." Where the method of hypothetical development is employed for assessing compensation in conjunc-

(y) *Special L. A. Officer v. Assudoma.*, 1938 A. I. R. (S) 225.

(z) *Pink v. Secretary of State*, 34 Cal. 599 ; *Rajendra v. Secretary of State*, 32 Cal. 343.

(a) *In the matter of Government of Bombay and Karim Tar Mohomed*, 33 Bom. 325.

(b) *Harish Chandra Neogy v. Secretary of State*, 11 C. W. N. 875.

(c) *Amrita Lal Bysack v. Secretary of State*, 22 I. C. 78.

tion with the method of ascertaining the present value of the land by reference to the prices realised by the sale of neighbouring lands and the consequence is that the two methods lead to very much the same result, it follows not only that, that result is entitled to so much the greater degree of confidence but also that the method of hypothetical development is itself corroborated, (d).

Duty of Court in matters of valuation :—The L. A. Officer under sec. 11 as also the District Judge under sec. 18 of the L. A. Act 1894 is bound to exercise their own judgement as to the correct basis of valuation when assessing compensation for land acquired under the Act and their judgement cannot be controlled by any agreement between the parties interested, (e).

Where a claimant fails to prove the value of the land at the rate or upon the principle claimed by him, the judge is not bound to accept the award but it is his duty, having regard to all the evidence and to all the circumstances of the case, himself to determine what is the fair compensation for the land acquired. Where the condition and amenities of the land have completely changed and the land has gone up greatly in value the following three elements should be taken into consideration—(i) the position of the land acquired, its general advantage, and its special adaptability for the use of the owners, (ii), the purpose for which that land can be utilised in the most lucrative way, (iii), the damages sustained by the claimant by reasons of the acquisition injuriously affecting his other property, (e-1). It is the duty of the Court to determine whether the claimant has the right to receive compensation for the land or building thereon or other interests in it in the capacity which he avers, (f). If the owner wants compensation for the land irrespective of the consideration that it is a land used to grow a certain crop and then separately claims compensation for the loss of income from the crop, he cannot be penalised simply because he claimed under two heads what he ought to have claimed in the head of market value. The fact that the claim under one head was placed somewhat low and a higher claim was made under another head, should not stand in the way of giving full market value to the owner which may be held to be fair market value in respect of these lands, (g).

Under the Defence of India Rules, under D. I. Act, 1939, requisition in relation to land, without more is the acquisition of an interest in land for a time or for an uncertain period as the case may be. Sub-rule 4 of R. 75-A of the Defence of India Rules expressly provided that compensation had to be given in the case of requisition also. The measure of the compensation is not indicated in the sub-rule but that is to be found in Sec. 19 of the Act

(d) *The Trustees for the Improvement of the City of Bombay v. Karsandas*, 33 B. 28.

(e) *M. Samiullah v. The Collector of Aligarh*, 73 I. A. 44 : I. L. R. (1946) All. 185 : 223 I. C. 550 : 1946 P. W. N. 119 : 59 L. W. 312 : A. I. R. (1946) P. C. 75 : 1946, A. W. R. (P. C.) 99 : 1946 A. L. J. 221 : 1946 A. L. W. 263 : (1946) 1 M. L. J. 333 (P. C.) ; 48 Bom. L. R. 439 : 1946 O. W. N. 212 : 27 P. L. T. 222 : 50 C. W. N. 401 : 1946 M. W. N. 158.

(e-1) *Hoogly Mills Co. v. Secretary of State*, 12 C. L. J. 489 : 8 I. C. 800.

(f) *Government of Bombay v. Esufali Salebhoy*, 12 Bom. L. R. 34 : 5 I. C. 621.

(g) *Secretary of State v. Rawat Mull Nopany*, 1938 A. I. R. (P) 618.

of 1939. Where only an interest in land has been acquired under the Defence of India Rules by requisition, as for instance only possession, the owner must have the market value of that interest. The basis of the compensation in such case must be fair rent. The true test for determining the market-value to be awarded to the owner as compensation under sec. 23 (1) of the L. A. Act 1894 is not what the owner was doing with the land at the time but what he could have done. Lands acquired for the Board of Trustees for the Improvement of Calcutta under Sec. 69 of the C. I. Act 1911 vest automatically in the Board under Sec. 17-A of the L. A. Act and when any such land is acquired compensation must be paid to the Board. It was held that the Board is entitled to get compensation on the basis of 5 per cent of the price of the land, (h).

Compensation for Requisition :—The effect of Rule 75(5) of the Defence of India Rules read with section 19 of Defence of India Act 1939 is that in case of a requisition i. e., temporary acquisition, the claimant is entitled to get compensation for the interest in land which was requisitioned on the principle embodied in sec. 23(1) of the Land Acquisition Act. In fixing compensation the Court has to proceed on the basis of fair rent when it can be assessed directly. Rent paid at any point of time may be regarded as fair rent for the purpose. So also is rent assessed by the Controller under the Bengal House Rent Control Act. In finding out the fair rent for the purpose of fixing compensation the potential value of the property has to be considered. The court should not proceed on the supposition that the premises might fetch higher rent after structural alteration specially where these are dependent on the ejection of tenant in occupation, (i).

Monthly compensation is not rent :—When a premises is requisitioned or acquisitioned, the monthly compensation paid therefor is not rent, as, it is not preceded by a grant by the owner to establish relationship of landlord tenant (i-1).

Defence of India Act and Rules 1962 :—The Defence of India Act 1939 with Rules expired on 30-9-1946 but was continued by Ordinance No. XII of 1946 and thereafter expired with expiration of emergency. Then again new Defence of India Ordinances Nos. 4 and 9 of 1962 were promulgated which again were repealed by Defence of India Act, 1962 and Rules 1962 incorporating vast changes comparing with old Acts and Rules. Sec. 19 of old Act corresponds with Secs. 29-39 of new Act and Rules 75 with Rules 107-117 of new Rules (See Part II.). (For D. I. Act & Rules 1971, see Part II.)

Sub-sec. (1), Clause (ii) ; Damages :—Under section 23 the court in determining compensation has to consider besides market value what damage, if any, has been suffered by the person whose land has been acquired. The damages have been enumerated in sec. 23(1), clauses (ii), (iii), (iv), (v) and (vi).

(h) *The Province of Bengal v. The Board of Trustees for the Improvement of Calcutta*, 50 C. W. N. 825.

(i) *The Collector of Darjeeling v. C. Mackertich* (1950) 5 D. L. R. Cal. 150 : 54 C.W.N. 853.

(i-1) *Corporation of Calcutta v. Shaw Wallace & Co.*, 46 C.W.N. 978 ; *Corporation of Calcutta v. Howrah Motor Co. Ltd.*, I.L.R. 1970 (1) Cal. 525.

The loss to an owner, whose lands are required or have been taken omitting all questions of injury to adjoining lands, includes not only the actual value of such lands, but all damages directly consequent on the taking thereof under statutory powers, (j).

Damages for trees :—Trees are things attached to the earth and are thus included in the definition of land in sec. 3(a) of the Act and this definition must be applied in the construction of sec. 23 of the Act. The value of such trees as are on the land when the notification under sec. 4(1) is made is included in the market-value of the land on which an allowance of 15 per cent is to be calculated under sec. 23(2) of the L. A. Act, (k). Fruit-bearing trees likely to bear fruits for a number of years, for example, mangoe trees, should also be valued at 20 years' annual rental, (l), Rs. 3/- was taken as the annual income of a cocoanut tree and ten years' purchase was allowed as the value for the cocoanut trees, (m). Where land is acquired under the L. A. Act, it cannot be valued as if it can be simultaneously used as a cocoanut tope and for building purposes. Where the claimant before the L. A. Officer estimated the value of the property as a cocoanut tope, he cannot be allowed in appeal to claim value on the footing that the land was fit for building purposes, (n). Where the court, in determining the market-value of certain property puts a fictitious value upon it, on account of its so called potentiality for building purposes, then the rate allowed by the court should be taken as an inclusive rate and nothing can be allowed in addition for the trees standing upon the land, (o).

Damage for orchard :—The orchard lands are not to be valued as ordinary occupancy in the neighbouring plots and added thereto the value of trees of which the orchards were composed. The value of an orchard depends largely upon the suitability of the land for orchard purposes, upon the care taken of it and upon its situation with regard to the market. It is not a question merely of the value of the trees and the earth in which the trees grow. The two cannot be valued separately. They must be valued together, (p).

Damage for nursery :—Under s. 23(1), *secondly*, of the L. A. Act, in the case of acquisition of land with a nursery, the Collector is bound to award the value of the plants in the nursery that come into existence between the date of the publication of the declaration of intention to acquire and the date on which the Collector takes possession (q).

When trees not separately valued :—Where a person whose land was

(j) *Cripps on the Law of Compensation*, 6th Ed., p. 116 : 7th Ed. p. 172.

(k) *Sub-Collector, Godavari v. Seragam Subaroyadu*, 30 Mad. 151.

(l) *Rajammal v. Head Quarters, Deputy Collector, Vellore*, 25 I. C. 393.

(m) *Shanmuga Velayuda Mudaliar v. The Collector of Tanjore*, 23 M. L. W. 336 : (1926) M. W. N. 235 : (1926), A. I. R. (M) 945.

(n) *Valavala Laksminarasamma v. Asstt. Commissioner of Labour*, 23 L. W. 731 : 95, I. C. 577.

(o) *Collector of Thana v. Chaturbhuj Radha Krishna*, 28 Bom. L. R. 548 : 95 I. C. 513 : 1926 A. I. R. (B). 356.

(p) *E. M. Cohen v. Secretary of State*, 43 I. C. 17.

(q) *Bhusan Chandra Samanta v. Secretary of State*, 40 C. W. N. 1034.

acquired under the L. A. Act ask the same to be valued as vacant land to be used for the purpose of erecting buildings, he could not at the same time claim the value of trees on it, on the footing that they would still remain there—the claims being inconsistent. The proper value of trees would be their value as timber after they have been cut down, (r). Where agricultural lands are valued as building sites, the claimants are not entitled to ask that the trees standing on the lands should be separately assessed and valued as fruit bearing trees since what is awarded is an inclusion price, (s).

Sub-sec. (1), Clause (iii) ; Principle of Re-instatement :—Besides the market-value of the land and the standing crops and the trees standing thereon the legislature directs that in assessing compensation for taking lands compulsorily the court has also to consider whether the claimant whose land has been acquired has suffered any damage by reason of severing such land from the rest of the land. The value to the owner can be ascertained either by a valuation of the lands taken with the addition of compensation for the incidental injury or by what is known as the *Re-instatement Principle*. In either case, the test of compensation is value to the owner. The difference arises in the method to be adopted in ascertaining the value. In a majority of cases the value to the owner may be fixed by the value of the property taken with the addition of compensation for incidental injury but in some cases the value so ascertained would not be the value to the owner, and then the principle of re-instatement should be applied. This principle is that “the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers. Unless such a sum is assessed as will enable him to replace the premises or land taken, by premises or land, which would be to him of the same value”.—*Cripps on the Law of Compensation*, 5th Ed., p. 118. It is not possible to give an exhaustive catalogue of all cases to which the principle of re-instatement is applicable. But we may instance churches, school houses of an exceptional character and business premises in which the business can only be carried on under special condition or by means of special licenses. *Ibid*, 6th Ed., p. 144 : 7th Ed., p. 170.

In the case of public buildings, and many important undertakings such as banks, electricity works, etc., which would be most costly to acquire, the promoters are often able to meet the difficulty by buying other suitable land and re-instating the owners thereon. Webb's Valuation of Real Property, 3rd., Ed., p. 87. The above principle of re-instatement was applied in India in the case of *Baroda Prosad Dey v. The Secretary of State* (t), where a piece of land over which there was a municipal drain was acquired by the Government and compensation was paid at the rate of the value of the adjoining land. The Municipality claimed a larger amount on the ground of expenditure in constructing a diversion drain. It was held, allowing the claim of the municipality, that the compensation awarded was inadequate

(r) *The Secretary of State v. Duma Lall Shaw*, 13, C. W. N. 487. *Shanmuga Velayuda Mudaliar v. Collector of Tanjore*, 23 M. L. W. 336 : (1926), M. W. N. 235 : (1926), A. I. R. (M) 945.

(s) *Tharasaruma v. Deputy Collector, Cochin*, 45 M. L. J. 339 : 18 L. W. 356 : (1923), M. W. N. 682 : 33 M. L. T. 48 : 77 I. C. 347.

(t) *Baroda Prosad Dey v. The Secretary of State*, 25 C. W. N. 677 : I. L. R. 40 Cal. 83.

in view of the principle of re-instatement, which is that an owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers unless such a sum is assessed as will enable him to replace the premises or lands taken, by premises or land which would be to him of the same value.

In *Province of W. B. v. Raja of Jhargram*, (u), Halsbury was quoted thus "when the land was used for some particular purpose not of commercial nature, such as a public park . . . it is very difficult to estimate the loss. One method adopted is that known as re-instatement, by which is meant that the amount of compensation to be awarded shall be assessed according to the cost of acquiring an equally convenient site and erecting an equally convenient premise" (v), where the cost of construction of water supply culverts were included on principle of re-instatement.

Damage for severance :—Sec. 23 provides that the compensation shall include not only the value of the land to be taken, but also damage, if any, to be sustained by the owner of the lands by reason of severing of the lands taken from the lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the Special Act, or any Act incorporated therewith. Webb's Valuation of Real Property, 3rd Ed., p. 85. Thus if the forecourt is taken from a house for the purpose of widening a road for a tramway, the land must be paid for, and compensation must also be given for the decreased value of the remainder of the premises—*Ibid*, page 86. Where the land acquired is intended to be used as a road, the claimant is entitled to compensation for depreciation in the value of the rest of his land in consequence of such use. In estimating compensation for severance both the actual and prospective use of the land must be considered. A prospective buyer is likely to pay less for the plot that remained than what he might have paid if he could use the land for two bungalows, (w).

Under the provisions of the L. A. Act part of an owner's tea garden land was taken and by the construction of a railway line several acres of land to the south of the line were cut off from northern portion of the garden where the residence of the manager and all buildings and offices connected with the management and the cooly lines were situated. The line ran through deep cuttings for a considerable portion of its length of about a mile and a half, some of which were incapable of being crossed by coolies employed on either side of the railway. It was held, that in computing the amount of compensation to be awarded, in addition to the market-value of the land and the amount allowed for standing crops, and the statutory allowance of 15 per cent., the increased cost of working the garden in consequence of the severance of the one portion from the other should also be taken into consideration, (x). The word acquisition in section 23 of the L. A. Act, includes the purpose for which the land is taken as well as the actual taking. A person whose land is acquired under the L. A. Act is entitled to compensation for

(u) *Province of W. B. v. Raja Jhargram*, A. I. R. 1955, Cal. 392.

(v) *Chairman, Serampore Municipality v. Secretary of State*, A. I. R. 1922, Cal. 386.

(w) *Secretary of State v. Dinshaw*, 27 S. L. R. 84 : 146, I. C. 1040 : 1933, A. I. R. (S) 21.

(x) *Baraora Tea Co. v. Secretary of State*, 28 C. 685.

loss of access to the remaining portion of his land resulting from the purpose for which the land is acquired, (y).

Sub-sec. (1), clause (iv) ; What is injurious affection :—The first of the reported English decisions which deals with the question of injuriously affecting lands by the construction of public works, where the mischief of which complaint is made is caused by what is done on lands taken from the same owner, in *re Stockport, Timperley and Altringham Ry. Co.*, (z). That decision has been considered in a number of subsequent cases. For a time it gave rise to considerable difference of judicial opinion, but the law applied by Crompton J. has been twice considered, and approved in the House of Lords, (a).

In the *Stockport Case*, *supra*, a company had taken land, the property of L, and proposed to make their railway so close to a cotton mill belonging to him, that, by reason of the proximity of the railway and the danger of fire from trains using the line, the building could only be insured at an increased premium, and was rendered of less saleable value. Crompton J. states the principle as follows : “Where the damage is occasioned by what is done upon other land which the company have purchased, and such damage would not have been actionable as against the original proprietor, as in the case of sinking of a well and causing the obstruction of water by percolation, the company have a right to say : ‘We had done what we had a right to do as proprietors, and do not require the protection of any Act of Parliament ; we therefore, have not injured you by virtue of the provisions of the Act.’ Where, however, the mischief is caused by what is done on the land taken, the party seeking compensation has a right to say : ‘It is by the Act of Parliament, and the Act of Parliament only, that you have done the acts which have caused the damage ; without the Act of Parliament everything you have done, and are about to do, in the making and using the railway, would have been illegal and actionable, and is, therefore, matter for compensation according to the rule in question.’”

The principle stated by Crompton J. in the *Stockport Case* was considered in *Duke of Buccleuch's case* (b), and a distinction was drawn between that case and the cases of the *Hammersmith Ry. Co. v. Brand* (c), and *City of Glasgow v. Hunter* (d), Lord Chelmsford, referring to these cases, said : “In neither of these cases was any land taken by the railway connected with the lands which were alleged to have been so injured, and the claim for compensation was for damage caused by the use and not by the construction of the railway. But if, in each of the cases, lands of the parties had been taken for the railway, I do not see why a claim for compensation in respect of injury to adjoining premises might not have been successfully made on account of their probable

(y) *M. E. Moola v. Collector of Rangoon*, 3 Rang. 350 : 98 I. C. 461 : 1927, A.I.R. (R) 29.

(z) *In re. Stockport, Timperly and Altringham Ry. Co.* (1864) 33 L.J. (Q.B.), 251.

(a) *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418 ; and *Cowper Essex v. Acton Local Board*, 14 A. C. 153.

(b) *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5, H. L. 418.

(c) *Hammersmith Ry. Co. v. Brand*, L. R. 4 H. L. 171.

(d) *City of Glasgow Union Ry. Co. v. Hunter*, (1870) L. R. 2, H. L. 78.

depreciation by reason of vibration, or smoke, or noise, occasioned by passing trains.”

Lord Watson in delivering the judgement in *Cowper Essex v. Acton Local Board*, (e) said : “It appears to me to be the result of these authorities, which are binding upon the House, that a proprietor is entitled to compensation for depreciation of the value of his other lands, in so far as such depreciation is due to the anticipated legal use of works to be constructed upon the land which has been taken from him under compulsory powers.” Again his Lordship said : “I am prepared to hold that, where several pieces of land, owned by the same person, are so near to each other, and so situated, that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act, so that if one piece is compulsorily taken and, converted to uses which depreciate the value of the rest, the owner has a right to compensation” (f).

Where a portion of the entire plot, acquired by the Calcutta Improvement Trust had been admittedly required for the street that was to be driven through it, the remainder is obviously affected by the execution of the scheme, having regard to the meaning of the word “affected” which appears in sec. 42 (a) of the Act, as explained by the Full Bench decision of the Calcutta High Court in (g) and the decision of the Judicial Committee (h) as has been held in (i).

The cost of putting up a fence to mask off the land from the acquired portion to prevent cattle from straying into the land and damaging crops, could be properly awarded under the 4th clause of sn. 23(1) of the Act, (j).

Difference between damage by severance and damage for injurious affection :—When by reason of the acquisition of a portion of an entire plot the portion acquired is severed from the other land of the person interested and his remaining land suffers damage in consequence of the severance the damage is said to be due to severance. But a property may be injuriously affected otherwise than by severance, as for example, by user of the acquired land in a manner affecting the value of other property of the person interested ; and damage for injurious affection can be claimed in such a case. “Where the damage caused to the other property or earnings of the person interested was caused by the severance of the land acquired from his other land and not in any other manner, he is entitled to damages under sec. 23(I) (iii) and not 23 (I) iv,” (k).

Damage for injurious affection when other lands of the person interested are acquired :—There is a difference between the claim of a person whose land had not been acquired for compensation for injury caused to his property or interests by the acquisition and the claim of a person part of whose land had

(e) *Cowper Essex v. Acton Local Board*, 14 A. C. 153.

(f) *Sisters of Charity of Rockingham v. The King*, (1922) 2 A. C. 315.

(g) *Mani Lal Singh v. Trustees for the Improvement of Calcutta*, 45 Cal. 343.

(h) *Trustees for the Improvement of Calcutta v. Chandra Kanto Ghosh*, 47 Cal. 500 (P.C.).

(i) *Trustees for the Improvement of Calcutta v. Meherunnessa Khatoon*, 59 Cal. 240.

(j) *Special Tehsildar Harijan Welfare v. S. Vaidyanatha Aiyar*, 1958, Mad. 214.

(k) *Indo Burma Petroleum Company v. The Collector of Yenangyaung*, 4 Bur. L. T. 250 : 12 I. C. 202.

been acquired for compensation for injury caused by the acquisition to the remainder of his land, and this was pointed out by Lord Halsbury in *Cowper Essex v. Acton Local Board*, (1). A piece of land was acquired for the construction of a bridge ; a bridge was constructed upon it and opened for traffic, and the claimant whose land was acquired for the construction of the bridge claimed compensation for the loss of the income derived from his ferry which was worked within a very short distance of the spot on which the bridge had been constructed and within the limits of his estate. The ferry which was his property had undoubtedly been injuriously affected ; he had suffered loss in consequence and the only question was whether his claim came within cl. (iv) of section 23 of the L. A. Act. In delivering the judgment the court observed that "the damage which must be taken into consideration under cl. (iv) of section 23 is the damage sustained at the time of the Collector taking possession of the land by reason of the acquisition injuriously affecting the other property in any other manner or the earnings of the person interested. There is no limit as to the nature of the 'injuriously affecting' except in so far as this is provided for by the other clauses of the section, the difficulty is as to the time when the damage is sustained. It is sufficient when possession is taken, there is other property or earnings injuriously affected so as to cause some damage to the person interested. The intention of the legislature to be gathered from the Act seems to have been that persons *a part of whose land* has been compulsorily taken from them, should, apart from its actual value, be compensated for injury done to their property by the taking." (1).

An owner whose land had been compulsorily acquired under the L. A. Act for the purpose of opening a market, sued to receive compensation for loss of profits derived from an existing market on other land belonging to him. Walsh A. C. J., held (m), that section 23 of the L. A. Act is limited by section 24 and that the Government is exempted from being sued for damages by reason of section 24(I)(iii) which provides that there is no right to compensation unless something is done which would be actionable if done by a private person. Dalal, J., held, on the other hand, that the owner could claim compensation for the damage sustained by way of diminution of the value of the market on his other land and that section 24(I) (iii) should be limited to cases where the damage claimed is by persons other than those to whom the acquired land belonged.

For the same reason damages which would be too remote to be recovered in an action cannot be recovered as compensation : *Halsbury's Laws of England*, Vol. VI. p. 45.

Where land is acquired for public purposes, the owner thereof is entitled to be compensated for any injury done to his other lands even though the loss is more than counterbalanced by the advantages he gains by the execution of the project. In such cases the owner is entitled to damage for

(1) *Cowper Essex v. Acton Local Board*, (1889) L. R. 14, Ap. Cas. 153. *Collector of Dinajpore v. Girija Nath Roy*, 25, Cal. 346.

(m) *Secretary of State v. Mohammad Ismail Khan*, 49 All. 353 : 25 A. L. J. 177 : 100 I. C. 749 : 1927 A. I. R. (A) 246.

diminished facilities of communication and access to his other lands, (n). A person is entitled to compensation under sub-clause 4 of section 23, of the L. A. Act in respect of a Railway Company having made the "level-crossing" across his private road giving access to his house, if he can show that he sustained damage or loss for it by reason of his other property having been injuriously affected, (o). The test is that where by the construction of works there is a physical interference with any right, public or private which the owners or occupiers of property are by law entitled to make use of in connection with such property, apart from the uses to which any particular owner or occupier might put it there, is entitled to compensation if by reason of such interference, the property as a property is lessened in value (p).

Damage for injurious affection, when no land of the person interested is acquired :—In order to entitle a person to recover compensation for injurious affection the damage must arise from something which would, if done without statutory authority, have given rise to a cause of action. In other words in order to have a right to compensation against promoters of an undertaking in respect of any act done under their statutory powers, the person claiming must have had a good cause of action in respect of that act if it had been done by any person not so authorised. The promoters of an undertaking, having acquired land may therefore use it in any way in which an adjoining owner might have lawfully used it without conferring any right to compensation. Thus, they may erect an embankment on the land acquired and destroy the amenity of adjoining property (q), they may block up access of light and air so long as no easement is interfered with (r), they may remove the support of buildings where the right of support has not been acquired (s), they may sink springs and draw off the underground water (t), they may pull down houses and so injure the business of neighbouring shops, (u). A company acting under the statutory powers is treated as a private individual acting within his own rights. If it does an act which it is authorised by law to do, and does it in a proper way, though the act works a special injury to a particular individual, such individual cannot maintain an action, and is without remedy unless one is provided by statute, (v). If however, such a company does an authorised act in a negligent or unreasonable manner, it will be liable to an action for damages, and, in a proper case, for an injunction, and the fact that a right to compensation is given by statute does not exclude the restraining jurisdiction of the court (w).

(n) *Nathor Hussain v. Deputy Collector, Usilampati*, 31 I. C. 259 ; *M. E. Moola v. Collector of Rangoon*, 3 Rang. 350 : 98 I. C. 461.

(o) *Madhu Sudan Das v. Collector of Cuttack*, 6 C.W.N. 406.

(p) *The Metropolitan Board of Works v. Mc Carthy*, (1874) 2 H. L. E. & 1 App. 243.

(q) *Re. Penny and South Eastern Rail. Co.* (1857) 7 E. and B 660.

(r) *Butt v. Imperial Gas Co.*, (1866) 2 Ch. App. 158. *Eagle v. Charing Cross Rail. Co.* (1867) L. R. 2 C. P. 638.

(s) *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1868) L. R. 3 C. P. 612.

(t) *New River Co. v. Johnson*, (1860) 29 L. J. (M. C.) 93.

(u) *R. v. Vaughan*, (1868) L. R. 4 Q. B. 190 ; *R. v. London Dock and Co.*, (1895) A.C. 587.

(v) *East Freemantle Corporation v. Annois*, (1902) A. C. 213 (P.C.).

(w) *Roberts v. Charing Cross, Euston and Hampstead Rail. Co.*, (1903) 87 L. T. 732.

In *Rameswar Singh v. Secretary of State for India*, (x), the appeal arose out of a suit brought by the plaintiff to recover compensation on account of permanent injury to a ferry, for an injunction, and for other reliefs. The plaintiff alleged that for the purpose of a railway line lands had to be acquired by the defendant railway company. The railway company had to construct a bridge across a river, and the result was, that a ferry, which had existed for many years past near the place where the bridge was constructed has been practically stopped by the construction of the railway bridge. He further alleged that, as a necessary consequence, a substantial loss was caused to him and that the land acquisition authorities awarded no damages in respect of the said ferry. The court held : "The mere construction of a railway bridge across a river whereby the profits of the ferry are reduced, does not entitle the owner to claim damages. In other words, the taking of property, that merely injures a franchise, but does not interfere with the exercise of it, is not such a taking of property from the owners of the franchise as to require compensation."

Damage for infringement of privacy :—It appears that there is some conflict of authority on the question as to whether the infringement of privacy entitles the claimants to compensation under the provisions of sec. 23 (1) cl. (iv) of L. A. Act. That "interference with the privacy of lands through their being overlooked from a railway embankments is not a damage to a private right which would, but for statutory powers, have given a right of action and the owners of such lands is not entitled to compensation" (y). On the other hand in a later case *Re. Ned's Paint Battery*, (z), it has been laid down that in considering the question of compensation under the compulsory Acquisition Acts, injury to amenities and privacy can be considered. In *Prasanna Kumar Datta v. Secretary of State for India in Council*, (a). Mitter J., held ; "We are not inclined to follow the earlier English decisions, having regard to peculiar conditions prevailing in India with reference to the question of privacy. In Bengal the right of privacy has long been recognised (b). There is also a decision of the Allahabad High Court in *Gokul Prosad v. Radha*, (c). Having regard to conditions prevailing in India the right view would be to follow the decision reported in Irish Reports to which reference has already been made."

"Damage at the time of the Collector's taking possession" includes both prospective and retrospective damages :—The words "at the time when the Collector takes possession of the land" cannot mean that compensation can only be given for the damage which had actually at that time been sustained without reference to a continuing damage caused by the acquisition. The

(x) *Rameswar Singh v. Secretary of State for India*, 34 Cal. 470 (488) : 11 C. W. N. 356 : 5 C. L. J. 660.

(y) *In re Penny and South Eastern Railway*, (1857) 26 L. J. Q. B. 225.

(z) *In re Ned's Paint Battery*, (1903) 2 I. R. K. B. 192.

(a) *Prasanna Kumar Datta v. Secretary of State for India in Council*, 38 C.W.N. 239.

(b) *Sri Narain Chowdhury v. Jadoo Nath Chowdhury*, 5 C. W. N. 147, *Mahomed Abdur Rahim v. Birjoo Sahoo*, 14 W.R. 103. *Sreenath Dutt v. Nand Kishore Bose*, 5 W. R. 208.

(c) *Gokul Prosad v. Radha*, 10 All, 358.

damage must be by reason of the acquisition ; but this is only complete when possession is taken, for till then the Government could withdraw from it under section 48. The Collector could moreover take possession if he chose on the very day the award was made. The whole proceedings from the declaration under sec. 6 to the taking of possession might be completed within a month, and on any such construction a person deprived of earnings or an annual income would get nothing or next to nothing. The words must be taken to mean the time when the damage takes place, and the right to compensation arises, and it is sufficient to bring a case within this provision if, when possession is taken, there is other property or earnings injuriously affected so as to cause some damages to the person interested (d).

Though the language of this clause [sec. 23 (1) iv] is slightly different from that of the corresponding provision of the English Statute, 8 and 9 Vic., 18, sections 49 and 63, that does not make the principle laid down in the case of *Cowper Essex v. The Acton Local Board* (e), wholly inapplicable to India. It is true that the claimants are entitled to compensation only for the damage sustained at the time of the Collector's taking possession of the land ; and at the time of the Collector's taking possession of the land must under the provisions of section 16 be preceded by his award which again must be preceded by a declaration of the intended acquisition under section 6, stating the purpose for which the land is acquired, and as the announcement of a purpose like the one (sewage discharge depot) for which the land in question was acquired must injuriously affect the value of such land, the claimants clearly bring their case within cl. (iv) of section 23 (1). For upon such announcement being made the market-value of the land must have been reduced, and if the owners wanted to sell the land at the time, the land would have been sure to fetch less than its former value. The contention, on the other hand, that as it was not shown that any of the tenants left the land upon the announcement or declaration being published or that the rent which the proprietors were realising had been reduced and therefore no damage has been sustained by the claimants at the time of the Collector's taking possession of the land is unsound, because the law does not make the rent realised from the land the sole basis for determining the market-value (f).

The words "sustained at the time of the Collector's taking possession" include not only damage which has been actually caused at the time but also that which can be reasonably anticipated and estimated then. In *Indo Burma Petroleum Company v. The Collector of Yenangyaung* (g), the land sought to be acquired adjoined the owner's oil-well and also oil-well sites belonging to other companies. The lower Court refused to allow compensation for damage caused by the severance of this land from the appellant's other lands on the ground that the damage was not sustained at

(d) *Collector of Dinajpore v. Girija Nath Roy*, 25 Cal. 346.

(e) *Cowper Essex v. The Acton Local Board*, (1889) L. R. 14 App. Cas. 153.

(f) *Prem Chand Boral v. Secretary of State*, 2 Cal. 103 ; *Guru Das v. Secretary of State*, 18 C. L. J. 244.

(g) *Indo Burma Petroleum Company v. The Collector of Yenangyaung*, 4 Bur. L. T. 250 : 12 I. C. 202.

the time the Collector took possession in as much as the appellants had not then made use of the land for storage purposes,. It was held that the addition of the price of land to the owner's well-site materially increased the value of the latter, that the joint value of the lands and the well-sites as one property was greater than the sum of the values of the lands and the well-sites taken separately and that the severance of the land injuriously affected the value of the well-sites and brought it down, at any rate, to the value they had before the owner acquired the land and that this depreciation in value took place at the time the Collector took possession in spite of the fact that the land had not upto then been used for storage purposes. The proper criterion for deciding the market price of the land in this case is the price which the other oil-well owners in the vicinity would be willing to pay for the lands.

Compensation should be awarded in land acquisition proceeding on the basis of the value to the owner of the property in its actual condition at the time of expropriation with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired. Where a portion of a plot of land is acquired for the construction of a public latrine there is a presumption that the acquisition will directly tend to reduce the amenity of the land as a whole and the owner is entitled to compensation for the same (h).

Damage for loss of earnings :—In determining the amount of compensation to be awarded for property acquired under the L. A. Act, the court must take into consideration the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his earnings (i). The loss of income which is contemplated in Clause *fourthly* of s. 23 is the loss of personal income to the owner of the land. It contemplates a case in which on acquisition of certain land, the value of other properties of the owner has deteriorated or the owner has suffered loss of his own income not derived from the land itself. The clause has no application in case the loss of income complained of is the loss of income of the property itself which is being acquired. The loss of income is a factor to be taken into consideration in fixing the market-value of the land itself which the owner is to get under cl. *firstly* s. 23. The price of land is fixed on the basis that the owner should get full compensation for the loss of income which he was getting from the land and this compensation is the market-value of the land acquired. Therefore for the land itself the owner is not entitled to get anything more than the market-value of the land and the statutory compensation payable to him under the law. He cannot get the market-value of the land and then compensation for the loss of income from the land itself (j).

In *Maharajah Sir Rameswar Singh v. Secretary of State* (k), the question

(h) *Pandurang Fate v. Collector, Nagpur*, 108 I. C. 745.

(i) *Kirpa Ram Brij Lal v. Secretary of State*, 106 I. C. 90.

(j) *Secretary of State v. Rawat Mull Nopany*, 1938 A. I. R. (P) 618.

(k) *Maharaja Sir Rameswar Singh v. Secretary of State*, 34 Cal, 470 : 11 C. W. N. 356 : 5 C. L. J. 660;

was upon what principle the damages ought to be assessed and it was held by Mookerjee J., that "it appears to be quite clear that no damages can be claimed on account of losses sustained by reason of the construction of the railway bridge : for instance, if the railway company had not acquired the lands used as landing places for the ferry, but had merely constructed a bridge across the river, as a result of which the traffic over the ferry was diminished no damage could be claimed, not at any rate, unless it was established that the ferry owner had an exclusive franchise, that is, an exclusive right to carry passengers and goods across the river. In other words the taking of property that merely injures a franchise, but does not interfere with the exercise of it, is not such a taking of property from the owner of the franchise as to acquire compensation. Reference may be made in this connection to the case of *Hopkins v. Great Northern Railway*, (1), in which it was held that the owner of a ferry cannot maintain an action for loss of traffic, caused by a new highway by bridge or ferry made to provide for a new traffic ; in that case, the owner of the ferry franchise unsuccessfully claimed compensation for loss of profits, caused by a rail-road built across the stream. The same view was taken in the cases of *Moses v. Sanford*, and *Hyde's Ferry v. Davidson County* (m), in the former of these cases, it was held that, the profits of the ferry franchise had been affected, not by the acquisition of the land over which the bridge was built, but by the opening of the bridge for travel across the river. *The case, however, is different, where the land which is used as the landing place for the ferry, is acquired.* In such case, the access to the river and with it, the exercise of the franchise is destroyed, and consequently compensation is payable. In other words, where the ferry landing and the ferry franchise remain precisely as before, though the profits are liable to be depreciated by the new mode of travel, legitimately created, no compensation can be claimed ; but where by reason of the acquisition itself, the exercise of the franchise or the use of the property appertaining to the franchise, is interfered with, damages can be rightly claimed ; It follows, therefore, that, although the value of the property to the owner at the time it is taken, is the measure of damages, the value of the ferry ought not to be determined by ascertaining the average of the profits at the date of the acquisition by regarding it as an invariable quantity and by taking a number of years' purchase. The damages ought to be calculated on the basis of the average profits from the ferry."

No compensation to persons not interested :—No compensation is tendered by the Collector or ordered by the Act except to persons interested in the land. If the acquisition injuriously affects the earnings of the persons interested, he is to obtain further compensation beyond the market-value of the land. But no compensation is given to persons *not interested* in the land on the ground that their earnings may be affected by the change of ownership, or indeed, on any ground. Quarrymen employed in a plot of land containing granite quarries are no more interested in the land on which he works

(1) *Hopkins v. Great Northern Railway*, (1877) 2 Q. B. D. 224.

(m) *Moses v. Sanford*, (1883) 11 Lee (Tennessee) 731 & *Hyde's Ferry v. Davidson County*, (1891) 91 Tennessee 291 ; 18 S. W. 626,

for wages. Nor are their earnings the earnings of the zemindar who is interested. The market-value of the property is not increased by the circumstance that a number of persons work on it and so earn their livelihood. That is no profit to the owner ; it may be expense to him (*n*).

Damage for loss of income due to acquisition under the Calcutta Improvement Act :—Under section 23(3) of the L. A. Act as amended by the Calcutta Improvement Act, an owner is not entitled to compensation for having been prevented from taking active steps in order to make an income out of the property. Where an owner of land claimed compensation for being obliged to keep the land vacant after the scheme has been sanctioned as he could not erect any structure, for the building of which he had pulled down the old structure, it was held that he was not entitled to such compensation (*o*).

Damages for loss of trade earnings :—The expression “loss of earnings” in sec. 23 (iv) of the L. A. Act, means loss of earnings from a business which at the time of acquisition was a going concern. Any provable diminution in the value of the goodwill in his trade consequent on the taking of the premises in which such trade is carried on and the consequential loss of his earnings would come within the term “earnings”. It would not however include prospective earnings, (*p*). The word “damage” in section 23 (1) (iv) must be construed as damage in carrying on a lawful business in a lawful manner and if the earnings of such a business are injuriously affected by reason of the acquisition, then the claimant would be entitled to compensation in respect thereof. But when the business is not one which is legally carried on, that is, when the business carried on is not in accordance with law, the damage resulting from the stoppage of such a business is not “damage” within the meaning of section 23 (1) (iv) and no compensation can be awarded under that head, (*q*). Loss of earnings falls under clause *fourthly* of section 23. In calculating the loss of earnings the claimants’ inability to get a suitable site for re-establishing his business as also the extension of time granted by the Collector to vacate the old site may be taken into consideration. Two years’ loss of earnings less deduction of earnings for 3 or 4 months which period the claimant obtained extension for delivery of possession was allowed, (*r*). Six month’s earning was allowed in (*s*).

The loss of earnings owing to the acquisition of favourable locality is to be calculated on the basis of what would be the earnings, if the trade occupations were pursued at the particular locality and the judge should not take into consideration the earnings which may accrue from the new

(*n*) *Secretary of State v. Shanmugarya*, 20 I. A. 80 : 16 Mad. 369 (P. C.).

(*o*) *B. N. Elias v. Secretary of State*, 32 C. W. N. 860 : 108 I. C. 251 : 1929 A. I. R. (C) 20.

(*p*) *L. A. Officer v. Jannabai* 47 Bom. L. R. 893 : A. I. R. 1946 Bom. 142.

(*q*) *Nannamiyan Umarbhi v. L. A. Officer*, 47 Bom. L. R. 853 : 224 I. C. 71 : A. I. R. 1946 Bom. 171.

(*r*) *State of W. B. v. T. N. Gupta*, A. I. R. 1959 Cal. 65.

(*s*) *Collector, Bilaspur v. Daulat Ram*, A. I. R. 1965 Him, Pra, 7.

habitation (t). The principle has been well illustrated by the dictum of Earle C. J. which runs as follows : "As to the argument, that compensation is in practice allowed for the profits of trade where the land is taken, the distinction is obvious. The company claiming to take lands by compulsory powers, expel the owner from his property and are bound to compensate him for all the loss incurred by the expulsion and the principle of compensation then is the same as in trespass for expulsion, and so it has been determined, (u). When premises used by a dentist for his profession were acquired, that his earnings were injuriously affected hardly admits of question, as the change of his address would necessarily diminish the number of his patients until his new place of business became well-known. The damage has to be assessed prospectively at the time of acquisition of the property and as compensation for the risk of business deteriorating, the amount of which is estimated from the data available at the time. Like all damages, it is seldom a complete recoupment for loss actually sustained (v).

In ascertaining the market-value of the land, the Court has to ascertain what the market-value of the property is, not according to its present disposition but laid out in the most lucrative and advantageous manner in which the owner can dispose of it. But when once the market-value has been assessed, the claimant cannot ask for damages on the ground that he might have made profits by engaging in a certain trade or business on the land in question. He is entitled to claim damages for loss of earnings if he carries on some business in the acquired premises and by virtue of the acquisition he is deprived of his profits by reason of the fact that he cannot find any other place where he can carry on the business in which he was engaged on the acquired premises, (w). Loss of business does not mean the profit you make by using the corpus the result of which would be that after some lapse of time, the property would be altogether valueless. "Loss of business" means that a man pursuing some trade or business is compelled to give it up or to carry it on elsewhere, which would give him less profit than what he was making at the former place. In that case he would be entitled to compensation on that account. To give the market-value of the land and in addition, compensation for loss which, the claimant says, has happened to him from being prevented from taking the corpus of the land would really be giving the value of the land twice over, (x). The owner of land can claim damages for loss of earnings if he carries on some business in the acquired premises and by virtue of acquisition he is deprived of his profits by reason of the fact that he can not find any other place where he can carry on the business. But to give the market-value of the land and in

(t) *Venkatacharia v. Divisional Officer, Tinnevely*, (1912) 1 M. W. N. 460 : 14 I. C. 625 ; *Recket v. Metropolitan Rail. Co.*, (1865) 34 L. J. Q. B. 257 : 13 W. R. 455.

(u) *Judh v. Hull Dock Co.*, (1846) 9 Q. B. 443 : 15 L. J. Q. B. 403.

(v) *Paramanund v. Secretary of State*, 44 P. R. 1904.

(w) *Suresh Chandra Banerjee v. Secretary of State*, 100 I. C. 190 : 1927 A. I. R. (C) 357.

(x) *Madhab Gobinda Roy v. Secretary of State*, 56 C. 819,

addition compensation for loss of business would really be giving the value of the land twice over (y).

Damage for diminution in value of good-will :—A further item to be taken into consideration is the probable diminution in the value of the claimant's good-will in his trade consequent on the taking of the premises in which such trade is carried on. Good-will is the probability of the continuance of a business connection, and its value is fixed at a certain number of years' purchase according to the nature of the particular trade or business. When lands, however, are taken under compulsory powers, the good-will is not purchased by the promoters, but remains the property of the trade and the loss suffered by him is the diminution in its value in consequence of his compulsory ejectment from the premises he is occupying. So far from the good-will being purchased or destroyed by the promoters, there are many cases in which diminution of its value is hardly appreciable, although the trade-premises have compulsorily been taken. If a business is of a wholesale character or is one which consists of orders from a widely extended area compulsory change of trade premises would be productive of small loss. If in addition, convenient premises can be acquired in the immediate neighbourhood of the premises taken, the loss incurred through diminution in the value of good-will becomes merely nominal, and the owner's only claim to compensation is in respect of any reasonable expenses which the taking of equally convenient new premises has rendered necessary. On the other hand, there are cases in which the diminution in the value of a good-will may practically equal the entire value of the good-will. This is the case when the business is retail, and local, depending on neighbouring customers and no suitable premises can be found on the locality within which the business connection extends (z).

Measure of damage :—A piece of land over which there was a municipal drain was acquired by the Government after paying compensation. The municipality claimed a larger sum on the ground of expenditure in constructing a diversion drain. It was held that under clauses 3 and 4 of sec. 23 of the L. A. Act the assessment of the value of the land regardless of the user for which it is specially fitted, cannot lead to an adequate award of the compensation for the loss sustained by the owner. The special adaptability of the land acquired cannot altogether be ignored in the determination of its market-value. That the compensation awarded was also inadequate in view of the principle of re-instatement which is that an owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken by premises or lands which would be to him of the same value. That in a case like the present where land is used for a special purpose in conjunction with other lands of the owner which are injuriously affected by its acquisition and where it is established that the owner will be compelled by law to provide himself with other land capable of being adapted

(y) *Governor-General-in-Council v. Indar Moni Jatia*, 52 P. L. R. 107 : (1950) 5 D. L. R. (Simla) 180.

(z) *White v. Commissioners of Public Works*, (1870) 22 L. T. 591—*Cripps*, pp. 107-108,

in such a way as to restore to his land injuriously affected its former usefulness, one measure of the damages sustained by the acquisition injuriously affecting the other property is the difference between the sum awarded for the land acquired and the cost to the owners of providing himself with other land to be used in a manner similar to that in which the land acquired was used, plus the cost of adapting it to such use, (a). The compensation ought to be assessed upon one-half of the annual loss which may be assumed as the loss of income of the owner of the ferry due to the acquisition of the lands under Act I of 1894 and upon the analogy of the principle recognised in section 17 of the Bengal Ferries Act (1895) which provides that when a private ferry is taken possession of by the Government the owner thereof may be awarded compensation up to a limit of 15 times the average net profit of the previous five years with interests and statutory allowance (b).

No compensation for remote damages :—In assessing the damages incurred consequent on the taking of land under compulsory powers, the ordinary principles of law as to remoteness of damage apply. When a market-gardener was, by reason of the company taking his garden unable to warrant his seeds, which in consequence were depreciated in value, the court held the damage to be too remote and not such as would entitle the claimant in respect thereof to compensation, (c). A claim in respect of the expenses which might be incurred for educating the children of workmen employed in the construction of reservoir was held to be too remote and too uncertain to entitle the claimant to compensation, (d). Arrears of rent, the recovery of which was rendered impossible by reason of the taking of land have been held too remote to be a subject of compensation (e).

Suit for damages :—In cases where compensation is recoverable for injurious affection under a special Act, the person injured can only recover in respect of losses sustained in consequence of what the promoters have lawfully done under their statutory power. If they exceed those powers, either by doing an act not authorised or by doing an authorised act in a negligent manner, the person injured will have a remedy by action and will not be entitled to compensation. If they, while carrying out this authorised work, fail to take sufficient care to prevent damage, they will be liable to an action in respect of such injury and also to pay compensation for the damage caused by their authorised acts—*Halsbury's Laws of England*, vol. VI, p. 44.

Sub-sec. (1), clause (5) ; Expenses for change of residence :—This clause provides that besides the damages for injurious affections, etc., as provided in the previous clauses, a claimant is entitled to reasonable expenses incidental to change of his residence or place of business, when his residence

(a) *Baroda Prasad Dey, Chairman, Serampur Municipality v. Secretary of State*, 49 C. 83 : 25 C. W. N. 677.

(b) *Sir Rameswar Singh v. Secretary of State*, 12 C. L. J. 56 : 6 I. C. 343.

(c) *Clarke v. Wandsworth Local Board*, (1868) 17 L. T. 549.

(d) *In re Tynemouth Corporation and Northumberland*, (1903) 80 L. T. 557,—*Cripps*. p. 118 (6th Ed.).

(e) *Re Kilworth Rifle Range*, (1899) 2 I. R. 305. *Halsbury*, Vol. 6, p. 36 footnote.

or place of business has been acquired. The loss to an owner, where the lands are required or have been taken, omitting all questions of injury to adjoining lands, includes not only the actual value of such lands but all damages directly consequent on the taking thereof under statutory powers. If the owner is in occupation of the premises, he is entitled to compensation for damages incurred through the necessity of removal, since these are losses consequent on the taking of his property under statutory powers. Such damages include the cost of removal by the owner of the furniture and goods and the consequent depreciation in the value of furniture which has been specially fitted, but which is not a fixture attached to the freehold. *Cripps*, p. 116 (6th Ed.). Loss incurred until other situable premises are obtained, costs of removal, and the value of fixtures if taken or the loss on them if not taken, are all matters properly to be considered in assessing the value of the land (f).

Expenses to tenants-at-will for removal :—The ordinary rule that has been adopted in England in the case of compulsory acquisition of land occupied by tenants whose tenancies are determined by notice or efflux of time, is that the tenants can not be awarded compensation for loss of profits even though they have reasonable expectation of continuing in possession or having the lease renewed (g). The Naik of a village is merely a lease-holder holding his lease at the pleasure of the Government (h), and his interest can not be placed on any higher footing and was entitled to no compensation at all (i).

A claimant, who was compelled to change his place of business on account of the acquisition of the land, but did so practically of his own accord, is not entitled to claim any compensation under the provisions of section 23 (1), clause 5 of the L. A. Act of 1894. A declaration was made under the L. A. Act for the acquisition of certain premises for the Calcutta Improvement Trust. The respondent company were the lessees of the premises under the owner and at the time when the notices were issued by the Collector for filing claims they were in the premises although this lease had expired and the landlord had served a notice on them to quit and instituted a suit for ejectment against them. The respondent company on being served with notice filed their claim. They subsequently vacated the premises to avoid litigation with the lessor. A small part of the premises was ultimately acquired and what was left untouched was almost equal in area to the new premises to which the company removed. It appeared that the respondent company when they left the premises knew that only a portion would be acquired. It was held that the respondent company was not entitled to receive any compensation under sec. 23 of the L. A. Act, for

(f) *Morgan v. Metropolitan Rail. Co.*, (1868) L. R. 4 C. P. 97, Ex. Ch. *Halsbury*, Vol. VI, p. 36.

(g) *R. v. Liverpool & Manchester Railway Co.*, 4 Ad. & El. 650 : 43 R. R. 454.

(h) *Naik Vajesingji v. Secretary of State*, 51 I. A. 357 : 48 B. 613 : 26 Bom. L. R. 1143 : 29 C. W. N. 317 : 47 M. L. J. 574 : 40 C. L. J. 473 : 82 I. C. 779 : (1924) A. I. R. (P. C.) 216.

(i) *District Deputy Collector, Panch Mahals v. Mansangji Mokhamsangji Naik*, 30 Bom. L. R. 930 : 113 I. C. 169 : (1928) A. I. R. (B) 306.

changing their place of business as the change was not in consequence of the acquisition of the land (j).

Sub-sec. (1), clause (vi) ; Amendment :—Sub-clause (vi) of section 23 (1) has been introduced by Act 1 of 1894. Para 7 of the Preliminary Report of the Select Committee on the Bill to amend the L. A. Act X of 1870, dated 2nd February, 1893, states the reason for introducing the sub-clause to the following terms : "In part III we have made the alteration of the Act in detail. Section 24 of the Act (X of 1870) defines the matters to be considered in determining compensation. The Committee are of opinion that the Bill introduced last year rightly required the market-value to be taken at the time of the declaration under section 6, and not, as in the Act, at the time of the award ; but this change in the law required the addition to the section of a clause bringing under the consideration of the Court any diminution in the profits of occupation during the period between the declaration and the Collector's entry into possession, as also the value of any standing crops or trees that may be on the land when he takes possession."

Defect in legislation :—The legislature has amended section 23 (1) by the Amending Act XXXVIII of 1923 and under the present amended section the Court has to consider the market-value not at the time of declaration under section 6 as before the amendment but at the time of the publication of the notification under section 4 (1). The sub-clause 6 of section 23 (1) has been left unamended. It is an anomaly why the claimant should not be entitled to the damage resulting from the diminution of the profits of the land between the time of the publication of notification under section 4 (1) which must be much prior in time than the publication of declaration under section 6 and the Collector's taking possession of the land.

Damage for delay in acquisition :—Besides the damage enumerated above, a claimant is entitled to the damage resulting from diminution of the profits of the land between the time of the publication of declaration under section 6 and the time of the Collector's taking possession of the land. "The sub-clause contemplates those cases in which on account of declaration of acquisition, there is diminution in the profits *e. g.*, in case of agricultural land when there is no cultivation and in case of building and tenanted lands when there is a falling off of tenants. Ordinarily no compensation is payable on account of delay between the date of the notification and the actual acquisition of land but when damage is actually sustained by reason of such delay, it should be awarded, (k). The Collector took possession in 1925 though notification under s. 4 was issued in 1933, it was held that no further compensation for prior possession was necessary to meet the ends of justice in view of the benefit derived by the owner owing to delay in acquisition and it was further held that compensation for possession prior

(j) *Secretary of State v. Breakwell & Co.*, 55 C. 957 : 32 C. W. N. 556 : 109 I. C. 315 : (1928) A. I. R. (C) 761.

(k) *Johnston v. Secretary of State*, 60 P. R. 191 : 42 I. C. 905 ; *Government v. Doyal*, 9 Bom. L. R. 99.

to the date of notification would scarcely fall within the scope of the L. A. proceedings (l).

Sub-section (2), statutory allowance :—This was section 42 of Act X of 1870. The Select Committee by their preliminary report on the L. A. Bill to amend Act X of 1870, dated 2nd February, 1893, observed : "It appears more convenient to insert here than in a latter part of the Act, the instruction contained in section 42 of the Act, that in addition to the amount of any compensation due to the owner of the land acquired fifteen *per centum* on the market-value shall be given in consideration of the compulsory nature of the acquisition. We have accordingly added a clause to this effect in the section by which we amend section 42 of the Act (X of 1870) and the Collector or Judge making the award will find embraced in a single section the whole of the detail required for the completion of his estimate of compensation." The Collector had therefore to pay 15 *per cent.* on the sum awarded according to the provisions of section 42 of the Act before he can make his title perfect (m).

Statutory allowance of fifteen per cent. on the market-value of the land :

—The provisions under s. 23 (2) for payment of 15 per cent for the compulsory acquisition in addition to the market price are mandatory, (l). The provisions of sec. 23 (2), L. A. Act are imperative and the Dist. Judge has no discretion in the matter. It is a statutory amount in addition to the market-value and the Dist. Judge has no power to deprive a claimant of that amount which is intended to compensate him for compulsory acquisition nor is the right of the claimant to receive 15 per cent. in addition to the market-value dependent on his having previously claimed it, because sec. 25(2) & (3) refer to market-value and not to compensation for compulsory acquisition which is to be awarded in every case, (n). In (o), the District Judge added 15 per cent, on the net value of the land and then awarded compensation for the buildings and timber. The High Court held that that was not a correct method of calculation. The total value of the property ought to have been found *first* and then 15 per cent., added on this total as compensation for compulsory acquisition.

Trees are "things attached to the earth" and are included in the definition of land in section 3 (a) of the L. A. Act and this definition must be applied in construction of section 23 of the Act. The value of such trees as are on the land when the declaration is made under section 6 is included in the market-value of the land on which the allowance of 15 per cent., is to be calculated under section 23 (2) of the L. A. Act, (p). The definition of the word "lands" given in the Act is not exhaustive. The use of the inconclusive verb "includes" shows that the legislature intended to lump together in one single expression, viz., "land" several things or particulars, such as the soil, the buildings on it, and the other interests in it, which all have

(l) *Mahomed Ismail v. Secretary of State*, 1936 A. I. R. (L) 599.

(m) *Secretary of State v. Shanmugaraya Moodaliar*, 20 I. A. 80 : 16 Mad. 369 (P. C.).

(n) *Muhammad Sajjad Alikhan v. Secy. of State*, 145 I. C. 526 : 1933 A. I. R. (All) 742.

(o) *Krishna Bai v. Secy. of State for India-in-Council*, 42 A. 555.

(p) *Sub-Collector, Godavari v. Seragam Subbaroyadu*, 30 M. 151.

separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require, (q). When agricultural lands are valued as building sites the claimants are not entitled to ask that trees standing on the lands should be separately assessed and valued as fruit-bearing trees, since what is awarded is an inclusive price, (r). In awarding 15 per cent. compensation for compulsory acquisition the market-value of trees and the wells in land should be added to that of the land (s).

The expression "market-value of the land" in section 23 sub-sec. (2) of the L. A. Act *prima facie* means the market-value of all interests in the land ; but in cases where Government have an interest in the land, that expression must mean the claimant's interest alone that being the only interest acquired by Government. Where land in which Government have an interest is acquired, the fifteen per cent. awardable under sec. 23 (2) of the Act should, therefore, be calculated not upon the entire market value of the land but only upon the value of the claimant's interest after deduction of the amount payable to Government (t).

Statutory allowance not payable on damages :—According to English practice an allowance of 10 per cent., for compulsory purchase is applied to the value of lands only, not to incidental damage ; this percentage may be taken to cover various incidental costs and charges to which an owner is subject whose land has been taken. *Cripps*, p. 111. In (u), it was contended on behalf of the Secretary of State that the plaintiff was not entitled to any statutory allowance under section 23 of the L. A. Act because such statutory allowance is decreed only on the *market-value of land*, and the damages assessed on account of disturbance of a ferry, cannot properly be regarded as the market-value of land. The Court held "it is not necessary for us to consider the matter from this point of view, because the learned vakil for the appellant concedes that he cannot claim additional compensation as a matter of right under section 23 of the L. A. Act." As has been indicated in the case of (v), compensation for loss of ferry, when it is awarded under the L. A. Act is not the market-value of land, but is an amount awarded under cl. (iv) of sub-sec. (1) of sec. 23.

The additional sum of 15 p. c. is available on the items covered by clause *firstly* only. The other clauses do not deal with market price. The amount of damages awarded in accordance with clause *secondly* to *sixthly* is not to be increased by adding 15 per cent. (w).

When statutory allowance is not allowed :—In a contract for sale of land

(q) *Government of Bombay v. Esufali Salebhoy*, 12 Bom. L. R. 34 : 5 I. C. 621.

(r) *Thareesaruma v. Deputy Collector, Cochin*, 45 M. L. J. 339 : 18 L. W. 356 : (1923) M. W. N. 682 : 33 M. L. T. 48 : 77 I. C. 347 ; *Secretary of State v. Duma Lall Shaw*, 13 C. W. N. 487.

(s) *The Collector of Barielly v. Sultan Ahmed Khan* 95 I. C. 150 : (1926) A. I. R. (A) 689.

(t) *Government of Bombay v. N. H. Moss*, 29 Bom. L. R. 1450 : 106 I. C. 31 : (1927) A. I. R. (B) 635.

(u) *Maharaja Sir Rameswar Singh v. Secretary of State*, 12 C. L. J. 56.

(v) *Collector of Dinapore v. Girijanath Roy*, 25 Cal. 345.

(w) *Collector, Raigarh v. Chaturbhuj Panda*, A. I. R. 1964 Madh. Pra. 196.

where a breach takes place on account of the default of the vendor, the purchaser is entitled to be put as far as possible in the position he would have been if the contract had been carried out on the day it is broken and therefore he is entitled to the difference between the contract price on the day of breach. The land having shortly after the breach of the contract been acquired by Government for public purposes, it was held that the plaintiff was entitled to the difference between the price paid by the Government and the contract price but not to the statutory allowance paid by the Government, (x). Under Board's Instruction, 65, Bengal Land Acquisition Manual 1910, page 74 the statutory allowance of 15 per cent, is not to be added to the amount which may be paid as the capitalized value of the revenue deemed payable in respect of the land acquired, as that amount does not form part of the market value of the land. But in assessing the amount of compensation due to the Government as landlord, the Government in its capacity as landlord is entitled as usual to a capitalisation of as much as may be found to be payable in respect of the proportion of the holding that is taken, together with 15 per cent., for the compulsory acquisition (y).

No statutory allowance for acquisition of Cantonment tenure :—The statutory allowance of 15 p.c. compensation under the Land Acquisition Act does not apply to a case where bungalows built on sites leased on what is known as cantonment tenures are concerned and the site is resumed by Government under power vested in it by the terms of the lease (z).

No statutory allowance for acquisition under the Defence of India Act, XXXV of 1939 and 1962 :—Vide Section 19 of Defence of India Act 1939. Part II.

No statutory allowance for acquisition under the Calcutta Improvement Act :—This section is not applicable to acquisition of land under the Calcutta Improvement Act, V of 1911 (B. C.). As amended by sec. 9 of the schedule referred to in sec. 71 of the said Act, the section [23(2)] runs as follows : "In addition to the market-value of the land, as above provided, the Tribunal shall in every case, except where the land acquired is situated in Calcutta Municipality and within the area comprised in an improvement scheme sanctioned under the Improvement Act 1911, award a sum of 15 per cent on such market-value."

No statutory allowance for acquisition under the Bombay Improvement Act :—15 per cent., was expressly directed to be allowed in addition to compensation by section 42 of the L. A. Act of 1870 [now section 23(2) of Act I of 1894] in consideration of the compulsory nature of the acquisition ; but no such provision is to be found in the Bombay Municipal Acts III of 1872 and IV of 1878. It constitutes no part of the compensation, properly so called, for the owner's loss, and cannot, therefore, without an

(x) *Nobin Chandra Shah v. Krishna Baroni*, 15 C. W. N. 420.

(y) *Monomohon Dutt v. Collector of Chittagong*, 40 Cal. 64.

(z) *Murarilal v. The Governor-General-in-Council*, I. L. R. (1943) All 878 : 1943 A.L.J. 545 : 1943 A. L. W. 503 : 1943 O. W. N. 300 : 1943 A. W. R. 217 : 210 I. C. 392 ; A. I. R. (1944) All 13.

express provision for the purpose, be allowed by the Court, (a). But sec. 23 (2) has been held to be applicable to proceedings in the District Court under s. 196 of the Bombay Municipal Boroughs Act. Beaumont, C. J. in delivering the judgment in, (b). Ss. 23, 24 and 25 of the Land Acquisition Act constitute a code laying down the principles on which the District Court is to act in arriving at the compensation to be paid for compulsory acquisition and it is impossible to leave out of that Code, s. 23 (2) which provides for an additional 15 *per cent.* These sections have to be treated as applicable to proceedings in the District Court under s. 198 of the Bombay Municipal Boroughs Act. The District Court in fixing compensation under s. 198 of the latter Act is therefore competent to allow the 15 *per cent.* for the compulsory acquisition in addition to the compensation awarded under the section.

No statutory allowance for acquisition under the L. A. (Mines) Act :— S. 23 (2) is clearly inapplicable and can not be invoked in case of acquisition effected under the L. A. (Mines) Act in case of the interest of the claimants being confined only to tonnage royalties (c).

Solatium, not a part of the award :—Under Land Acquisition Act, while solatium under s. 23 (2) may form part of the compensation to be awarded by the collector under s. 11, it does not form part of the award which the Court has to pass under s. 26, though it is required under section 23 (2) to add 15% on the amount of market value awarded by it, which will be in the nature of a direction to the collector to pay the amount just as in the same way as he is directed to pay interest. The reason perhaps is to avoid overburdening the owner whose lands are acquired against his will, with payment of court fee thereon. (d).

No court fee is payable on claim of solatium :—Accordingly in appeal under s. 54 no court fee is payable on solatium or for any difference in claim of solatium. (d).

Interest on compensation no part of award :—Similar is the case of interest on compensation as above, (d).

Matters to be neglected in determining compensation

24. But the Court shall not take into consideration—
first, the degree of urgency which has led to the acquisition ;
secondly, any disinclination of the person interested to part with the land acquired ;

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- (a) *Municipal Commissioners for the City of Bombay v. Patel Haji Mohamed*, 14 B. 292 ; *Municipal Commissioners for the City of Bombay v. Syed Abdul Huq*, 18 B. 184.
 (b) *The Borough Municipality of Ahmedabad v. Jayendra Vajubhai Divatia*, I. L. R. (1937) Bom. 632 : 39 Bom. L. R. 329 : 171 I. C. 692 : 1937 A. I. R. (B) 432.
 (c) *Secretary of State v. Lodna Colliary Co.*, 15 Pat. 510 : 17 P. L. T. 279 : 174 I. C. 860 ; 1936 A. I. R. (P) 513.
 (d) *Kesireddy Appala Swamy v. Spl. Tehsildar Central Ry.* A. I. R. 1970 Andh Pra. 139 (F. B.), following *Bansidhar Marwari v. Secy of State*, A. I. R. 1927 Cal. 533 and *Suryanarayana Rao v. Rev. Div. Officer* A. I. R. 1969 Andh. Pra. 55 (F. B.)

- thirdly*, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;
- fourthly*, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;
- fifthly*, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;
- sixthly*, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or
- seventhly*, any outlay or improvement on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the *[notification under section 4, sub-section (1)]*¹.

State Amendments

1. Maharashtra.—By Bombay Act XVII of 1960 (repealed by Maharashtra Act XXXVIII of 1964:—

For section 24 the following has been substituted, namely :—

"24. *Matters to be neglected in determining compensation.* The Court shall not take into consideration the following :—

- (1) the degree of urgency which led to the acquisition ;
- (2) any disinclination of the person interested to part with the land acquired ;
- (3) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;
- (4) any damage which is likely to be caused to the land acquired, after the date of the publication of the notification under section 4 sub-section (1) by or in consequence of the use to which it will be put ;
- (5) any increase to the value of land acquired likely to accrue from the use to which it will be put when acquired ;
- (6) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ;
- (7) any outlay or improvement on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector or after the date of the publication of the notification under section 4, sub-section (1) ;
- (8) the special suitability or adaptability of the land for any purpose, if that purpose is a purpose to which it could be applied in

¹ These words and figures were substituted for the words and figures "declaration under section 6" by s. 8 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

pursuance of any law, or for which there is no market apart from the special needs of the State Government ;

- (9) any increase in the value of the land by reason of the use thereof or any premises thereon in a manner which could be restrained by any Court, or is contrary to law or is detrimental to the health of the inmates of the premises or to the public health.

(2) Nothing in sub-section (1) shall apply to any building.

[See under Part III, Chapter IV, Bombay (5)].

2. Madras. (Tamil Nadu)—By *Madras Act XXIII of 1961*.—

Where any land is acquired for the execution of any housing scheme, the Land Acquisition Act, 1894 (Central Act I of 1894) as in force in the state of Madras, shall apply subject to the following modifications, viz.—

In section 24 of the Act.—

- (i) in clause *sixthly*, the word “or” occurring at the end shall be omitted ;
- (ii) in clauses *seventhly*, the word “or” shall be added at the end ; and
- (iii) after clause *seventhly*, the following clause shall be added, namely :—

“*eighthly*, any increase to the value of the land acquired by reason of its suitability or adaptability for any use other than the use to which the land was put at the date of the publication of the notification under section 4, sub-section (1).

By the *Madras City Improvement Trust Act No. XXXVII of 1950* :—

[See under Part III, Chapter IX, Madras (I)].

3. Calcutta (Improvement).—By *Bengal Act V of 1911 ; S. 71 and W. B. Act XXXII of 1955, S. 74* :—

[See under Part III, Chapter XV, W. B. (2)].

4. Howrah (Improvement).—By *Howrah Improvement Act 1956*.

[See under Part III, Chapter XV, W. B. (3)].

5. Bihar.—By *Bihar Town Planning and Patna Improvement Trust Act No. 35 of 1951*.

[See under Part III, Chapter III, Bihar (7)].

6. Gujarat.—same as in Maharashtra.

7. Mysore.—By the *Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961*.

(See under Part III, Chapter X).

8. Jubbulpore (City).—By *C. P. and Berar Act III of 1950*.

[See under Part III, Chapter VIII, M. P. (10)].

9. Punjab.—By *Punjab Act IV of 1922*.

[See under Part III, Chapter XII, Punjab (4)].

10. U. P.—Similar to that of Bihar, U. P. Act X of 1945. It is to be noted that a new section 24A is added in above legislation.

Notes

Old Act :—Sec. 25 of the old Act X of 1870 ran as follows.

25. But the Judge or assessor shall not take into consideration.—

“*First*, the degree of urgency, which has led to the acquisition,

Secondly, any disinclination of the person interested to part with the land acquired.

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit.

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put.

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired.

Sixthly, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put ;
or

Seventhly, any outlay or improvements on such land made, commenced or effected, with the intention of enhancing the compensation to be awarded therefor under this Act."

Amendment :—This was section 25 of the old Act X of 1870, with certain alterations in cl. (4) so as to make it quite clear that the legislature intended to exclude from compensation only a possible depreciation of the acquired land itself from the use to which it will be put, that is to say, if garden lands were appropriated for a latrine, the owner will get compensation as for garden lands without reference to the lower value they will subsequently have. *Select Committee Second Report, dated 23rd March, 1923.* By section 8 of the Land Acquisition (Amendment) Act, XXXVIII of 1923, this section has been amended by substituting the words "notification under section 4, sub-section (1)" in place of "declaration under section 6 in clause *seventhly*." The effect of this amendment is to enlarge the period during which no cost of improvements on or disposal of the lands acquired, commenced, made or effected *without the sanction of the Collector* shall be taken into consideration by the Court. Under Act I of 1894, sec. 24 (7) as it originally stood, the period commenced from the date of the declaration under sec. 6. Under the amendment made it relates back to the prior notification under sec. 4 (1).

Difference between section 23 and section 24 :—While sec. 23 lays down the matters which the court *shall* take into consideration in determining compensation for land acquired, sec. 24 lays down matters which the court *shall not* take into consideration in determining compensation. The Court shall exclude from consideration the following seven points in assessing compensation for the land acquired : (1) the degree of urgency which has led to the acquisition ; (2) any disinclination of the person interested to part with the land acquired ; (3) any damage sustained by him which if caused by a private person, would not render such person liable to a suit ; (4) any damage which is likely to be caused to the land acquired ; (5) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ; (6) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or (7) any outlay or addition or improvements to land acquired, incurred or made after the date of the publication of the notification under

sec. 4, sub-sec. (1). Sections 23, 24 and 25 can be applied for paying compensation (a).

Clause (1) ; Degree of urgency :—The degree of urgency of acquisition will not have any effect on the assessment of the valuation of the land, when land is required for public purposes. In the case of acquisition of land by private individuals, the degree of urgency plays considerable part in influencing the valuation of land and the value of the land may rise beyond all proportion, according to the urgency of the demand or by compensation. In case of acquisition for public purposes, what the Court has to consider is the market-value, of course, according to the most favourable and lucrative way in which the land can be disposed. The sovereign power of every State has authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction, but it is not deemed politic to exercise this authority so as to interfere with security in the enjoyment of private property or to confiscate private property for public purposes without paying the owner its *fair value*, (b). Where agricultural land was acquired for a *mandi*, the compensation should be assessed at the amount which similar land in the neighbourhood is likely to fetch for purposes of agriculture. The purpose for which the land is required should not influence the award of compensation. Where a District Board acquired land at a high price by private purchase for the enlargement of a *mandi* in order to obviate the delay caused by proceedings under the L. A. Act the fact should not be taken into consideration in assessing the value of other land subsequently acquired through Government (b).

Clause (2) ; Disinclination to part with :—The court shall not take into consideration any disinclination of the person to part with the land acquired. The only thing the court has to do in a reference under section 18, is to ascertain the market-value of the land acquired at the date of the publication of notification under sec. 4 (1). All objections, real, imaginary or sentimental, to the acquisition of land must be made before the Collector within thirty days from the date of the publication of the notice under sec. 4 (1) of the Act and the Local Government is to decide whether, regard being had to the objections of the claimant, they are real, imaginary or sentimental and the decision of the Local Government in the matter is final and the L. A. Court has no jurisdiction to reconsider the matter. It was observed that in making the acquisition of land "the wishes of the owner of the land was wholly irrelevant under the L. A. Act I of 1894" (c).

Before the L. A. (Amendment) Act XXXVIII of 1923 was passed, in fact the wishes of the owner had not to be considered at all and could be excluded altogether from consideration. After the Amending Act of 1923 was passed the wishes of the owner has to be considered both by the Collector and the Local Government, though the Local Government has been given the sole power of deciding as to whether the land should be acquired or not. As the

(a) *Paresh Chandra v. State of Assam*, 1962 (3) S. C. R. 88 : A. I. R. 1962 S. C. 167.

(b) *Secretary of State v. Basawa Singh*, 19 P. W. R. 1913 : 17 I. C. 764,

(c) *Ezra v. Secretary of State*, 30 C. 36 : 7 C. W. N. 249,

law stands, the owner cannot ask the Court to restrain the Government from taking possession because the lands are taken against his will or that he is not willing to part with the land. As soon as the Local Government decides to acquire the land, his personal wishes not to part with the land become immaterial because the law declares that a declaration to acquire the land for public purposes is conclusive and whatever objections the owner may have on personal grounds must give in for public purposes. A claim for damages was put forward on the ground that the employment of a Brahmin cook would be necessary for the service of the temple. It was held that upon the evidence in the case, no such necessity is made out and the grievance that offerings to the idols in the temple would have to be carried through the public way and would thereby lose their religious efficacy, is too sentimental to admit of any compensation being awarded to it (d).

Clause (3) ; Damage without injury :—The Court shall not take into consideration any damage sustained by the owner which if caused by a private person, would not render such person liable to a suit.

It should be noted that an owner is not injuriously affected or entitled to compensation unless the damage is such that but for the statutory authority it would have been actionable. Since no action can be brought where damage has resulted from the authorised use without negligence of statutory powers, the right to compensation is the substituted remedy which the legislature has provided. Where a local authority had a general implied right of access to sewers, and such access had not been prevented, but only rendered less easy and convenient it was held that there would have been no right of action by the local authority supposing the company had not been protected by the powers of their Act, and that consequently, no claim to compensation could be sustained, (e).

The law contemplates that not every kind of damage which, but for statutory powers, would have been actionable, gives claim to compensation. If the damage complained of is a personal injury or injury to trade or caused by the user and not by the construction of the authorised works the mere fact that but for the statute it would have been actionable is not in itself sufficient to found a claim for compensation. The user being made lawful by statute, no cause of action arises with respect to it, although, but for the statute, it might be actionable or an indictable nuisance. The application of this principle, or in other words, the question whether damage, complained of in any particular case would have been actionable but for the statute, has given rise to a large number of decisions, which have established the following tests :—

(a) When the subjacent or adjacent support to which the owner of buildings is by law entitled, is interfered with and structural damage is occasioned, such owner is subjected to a loss which but for statutory powers,

(d) *Collector of Poona v. Kasinath*, 10 B. 585 (591).

(e) *Birkenhead Corporation v. London & N. W. Railway Co.*, (1885) 15 Q. B. D, 572 C. A. : 52 L. J. Q. B. 48,

would have given him a right of action, and he has a right to claim compensation (f).

(b) When an easement or similar right has been interfered with the loss so occasioned would have been actionable but for statutory power and the owner has a claim to compensation. Interference with access to an ancient ferry attached to the claimant's land (g), obstruction of a private road (h), or of access through a hall which the claimants were entitled to make use of in connection with their property (i), or of ancient light (j), or of diminution of the flow of water to which a riparian owner has a prescriptive right (k), are matters for which compensation can be claimed.

But one is not entitled to compensation unless his legal right has been interfered with. If promoters construct works, and their character is such that they could have been constructed by the grantor, the grantee is not subjected to a loss which, but for statutory powers, would have been actionable and can not maintain a claim to compensation (l). Interference with a flow of water, to which there is no prescriptive right is not a loss which, but for statutory powers, would have been actionable and there is no claim for compensation, (m). Yet if such water is a common source which everybody has a right to appropriate, no one is justified in injuring the right of appropriation by contaminating the water, (n). The principle is fully explained by Wills J ; in his judgment in, (o). "The damage complained of must be one which is sustained in respect of the ownership of the property, in respect of the property itself" and not in respect of any particular use to which it may from time to time be put ; in other words it must, as I read that judgment, be a damage which would be sustained by any person who was the owner, to whatever use he might think proper to put the property. Now, that of course is to be taken with the limitation that a person who owns a house is not to be expected to pull it down in order to use the land for agricultural purposes. That would be putting the judgement in *Ricket v. Metropolitan Rail. Co.*, (p), to an absurd extent. The property is to be taken *status quo*, and to be considered with reference to the use to which any owner might put it, in its then condition, that is, as a house."

In *Maharaja Sir Rameswar Singh v. Secretary of State*, (q), it was held that "no damages can be claimed on account of the losses sustained by reason of the construction of the railway bridge ; for instance, if the railway

(f) *Metropolitan Board of Works v. Mc. Carthy*, (1874) L. R. 7 H. L. 243.

(g) *R. v. Great Northern Rail. Co.*, (1849) 14 Q. B. 25.

(h) *Glover v. N. Staffordshire Rail Co.*, (1851) 16 Q. B. 912.

(i) *Ford v. Metropolitan Rail. Co.*, (1886) 17 Q. B. D. 12.

(j) *Eagle v. Charing Cross Rail. Co.* (1867) L. R. 2 C. P. 638.

(k) *Mortimer v. South West Railway Co.* (1859) 1 Ex. B. 375.

(l) *Bird v. Great Eastern Rail. Co.*, (1865) 19 C. B. (N. S.) 268.

(m) *R. v. Bristol Docks Company*, (1910) 12 East 429.

(n) *Ballerd v. Tomlinson*, (1885) 29 Ch. D. 115.

(o) *Beckett v. Midland Railway Company*, (1867) L. R. 3 C. P. 82.

(p) *Ricket v. Metropolitan Rail. Co.*, L. R. 2 H. L. 187.

(q) *Maharaja Sir Rameswar Singh v. Secretary of State*, 34 Cal. 470 : 11 C. W. N. 356 : 5 C. L. J. 669.

company had not acquired the lands used as landing places for the ferry, and had merely constructed a bridge across the river, as a result of which the traffic over the ferry was diminished, no damages could be claimed, not at any rate, unless it was established that the ferry owner had an exclusive franchise, that is, an exclusive right to carry passengers and goods across the river. In other words, the taking of property, that merely injures a franchise, but does not interfere with the exercise of it, is not such a taking of property from the owners of the franchise as to require compensation, that the owner of a ferry cannot maintain an action for loss of traffic, caused by a new highway by bridge or ferry made to provide for a new traffic; in that case, the owner of the ferry franchise unsuccessfully claimed compensation for loss of profits, caused by a railroad built across the stream, (r). In the former of these cases, it was held that the profits of the ferry franchise had been affected, not by the acquisition of the land over which the bridge was built, but by the opening of the bridge for travel across the river. The case, however, is different where the land, which is used as the landing place for the ferry, is acquired. In such a case, the access to the river, and with it, the exercise of the franchise is destroyed and consequently compensation is payable, (s). In other words, where the ferry landing and the ferry franchise remain precisely as before, though the profits are liable to be depreciated by the new mode of travel, legitimately created, no compensation can be claimed; but where by reason of the acquisition itself, the exercise of the franchise or the use of the property pertaining to the franchise, is interfered with, damages can be rightly claimed."

Where an owner, whose land had been compulsorily acquired under the L. A. Act for the purpose of opening a market, sued to receive compensation for loss of profits derived from an existing market on other land belonging to him, it was held that section 23 of the L. A. Act is limited by section 24 and that the Government is exempted from being sued for damages by reason of section 24(3) which provides that there is no right to compensation unless something is done which would be actionable if done by a private person; that the word "him" in section 24(3) relates to a claimant and not to a third person and that it would be misleading to seek guidance from English decisions except in so far as it is necessary to explain ambiguous provisions of the Indian statute which is an attempt to codify the general principles of English law. Dalal, J., held, dissenting, that the owner could claim compensation for the damage sustained by way of diminution of the value of the market on his other land and that section 24(3) should be limited to cases where the damage claimed is by persons other than those to whom the acquired land belonged, (t).

(r) *Hopkins v. Great Northern Railway*, (1877) 2 Q. B. D. 224.

Moses v. Sanford, (1883) 11 Lee. (Tennessee) 731 and *Hyde's Ferry v. Davidson County*, (1891) 91 Tennessee 291 : 18 S. W. 626.

(s) *Collector of Dinajpore v. Girija Nath Roy*, 25 Cal. 345, and *Reg. v. Great Northern Ry.* (1849) 14 Q. B. 25 : 80 R. R. 203. *Cowes Urban Council v. Southampton*, etc. (1905) 2 K. B. 287.

(t) *Secretary of State v. Mahomed Ismail Khan*, 49 All. 353 : 25 A. L. J. 177 : 100 I. C. 749 : 1927 A. I. R. (A) 246.

Clause (4) ; Prospective damage :—With reference to the clause 4 of section 24 which was cl. (3) of section 25 of Act X of 1870, the Government of Bombay pointed out the difficulty of discrimination accurately between clause (3) of section 24 (now section 23) and clause (4) of section 25 (now section 24). The select Committee by their Second Report dated 23-3-1893, explained the difference between the above two provisions of the L. A. Act I of 1894 in following terms : "The former permits to be taken into consideration in an award of compensation any damage sustained by reason of the acquisition injuriously affecting *other property* of the owner. The latter excludes from consideration any *damage caused by the use to which the land acquired will be put* and it was contended that under the latter clause it was doubtful whether an owner could be compensated for the damage caused to the rest of the building site by the construction on the part of it of a public latrine. We think that even as the Act at present stands, there is no doubt of the right of the owner to compensation for damage of this sort : but we have so altered cl. (4) section 24 of the Bill as to make it quite clear that we exclude from compensation only a possible *depreciation of the acquired land itself* from the use to which it will be put, that is to say, if garden lands are appropriated for latrine, the owner will get compensation as for garden lands without reference to the lower value they will subsequently have." The only damage the claimant is entitled to, between the date of declaration or taking possession by the Collector, has been provided for in cl. (6) of section 23(1) which provides that in determining the amount of compensation to be awarded for land acquired under this Act the Court shall take into consideration, *sixthly*, the damage, (if any) *bona fide* resulting from the diminution of profits of the land between the time of the publication of the declaration under section 6, and the time of the Collector's taking possession of the land.

Clause (5) ; Prospective increase in value due to acquisition :—In assessing the amount of compensation payable when land is taken, the probable use to which such land may be put is necessarily an element to be taken into consideration. Land which may probably be used for building purposes cannot be valued on the same basis as merely agricultural land (u). But although prospective value is a necessary element in the assessment of compensation such value must be entirely excluded where it would arise from the construction of the particular works authorised by the Act, which gives compulsory powers. *It is a recognised principle to exclude from the assessment of compensation any enhancement or diminution in value consequent on the construction of works authorised by the Special Acts under which the assessment is made.* Cripps, p. 104. In *Penny v. Penny*, (v) Wood, V. C. says : "As to the value of the interest, it appears to me clear that the plaintiff's interest is not to be treated as having been increased through an act of the Board of Works. One might as well value the interest of the improvements which have taken place in consequence of the houses having been thrown down and other constructions made, and so on. It is not the interest

(u) *R. v. Brown*, (1867) L. R. 2 Q. B. 630.

(v) *Penny v. Penny*, (1868) L. R. 5 Eq. 227.

which has been acquired by the Board that has to be estimated but the *value* of the interest taken from the person with whom the Board deals. The scheme of the Act, I take to be this, that every man's interest shall be valued *rebus sic stantibus*, just as it occurs at the very moment when the notice to treat was given."

It is settled law that in a case of compulsory acquisition of land, the owner is entitled to receive compensation based on the value of the land to himself, not based on the value to the acquiring authority ; in assessing the value regard must be had not only to the use which the owner has made of the land up to the date of notification under s. 4 of the Act, but also to all the potentialities and the restrictions on its user as on that date. But the Court must *exclude* any increments of value which would accrue to the land by reason of the use to which it is to be put after acquisition and any value which after the notification under s. 4 accrues to the land by reason of the further developments of the scheme for the purpose of which it is to be acquired. If a claim is made for additional qualification on the ground of some special adaptability of the land for a special purpose, but that special adaptability for the value apart from the scheme for which the acquisition is made no compensation can be allowed on that account because that will be doing what cannot be done under sec. 24(5) of the L. A. Act, (w). Sub-section 5 of s. 24 of the Land Acquisition Act means no more than this : that in valuing the land acquired, on the date of the notification under s. 4(1) of the Act, it must be valued as it then stood, and not as it would stand when the land has been acquired and used for the purpose for which it was acquired. But it does not mean that the possibility that a particular purchaser of land will give a higher price for it by reason of its possessing a special adaptability must be regarded merely because the land will be more valuable in his hands when he exploits that adaptability than it would be if left in the hands of the vendor who was unable to exploit it, (x).

The question of market-value of land at the date of acquisition does not depend on the result of acquisition, (y). The fact that a shop-keeper is willing to pay a large price for a shop in a *mandi*, or so near a *mandi* as to enable him to enjoy the benefit enjoyed by the proprietors of the shop in the *mandi*, in the event of his being fortunate enough to receive sanction for the purchase under the Alienation of Land Act, should not be considered in assessing the value for the purposes of the L. A. Act unless it is shown that the sanction would be granted for the purchase. The evidence of witnesses, who merely give opinions as to the value of land or express their willingness to purchase it, should be excluded in determining the amount of compensation, (z).

(w) *Revenue Divisional Officer, Vizagapatam v. Zaminder of Chemudu*, 1937 M. W. N. 773 : 46 L. W. 492 : 1937 A. I. R. (M) 902.

(x) *Sri Raja Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam* 66 I. A. 104 : I. L. R. (1939) M. 532.

(y) *Umar Buksh v. Secretary of State*, 46 I. C. 906.

(z) *Secretary of State v. Basawa Singh*, 17 I. C. 764 : 19 P. W. R. 1913 : 57 P. R. 1913.

In (a), the lower appellate court observed : "When we consider the potential or prospective value of the land taken, whether what was or is now mere agricultural land will probably in a few years' time become valuable, we must bear in mind the fact that all this land is in close proximity and contiguous with the terminus of a railway running many hundreds of miles into the heart of the African continent . . . : a railway must increase trade and traffic, and the value of building sites near its most important stations," and the court held that it is legitimate to infer that the railway had been a most important factor in effecting it. In commenting on this part of the judgment of the lower appellate court and Judicial Committee of the Privy Council observed : "Their Lordships cannot read this part of the judgment without seeing that the learned judges have admitted into their minds those very considerations which the Act directs them to exclude, *viz.*, speculations on the value likely to be conferred on the land taken for the railway by the construction of the railway itself. To what extent their valuation has been affected thereby does not appear, but it may easily account, even if standing alone, for any amount of increase over a market-price which has been inferred from an examination of actual transactions."

In (b), the Judicial Committee observed that "there is an express provision in section 25 (now section 24) under Act X of 1870 that the assessor shall not take into consideration any increase in the value of the land acquired likely to accrue from the use to which it will be put. That points to the time when the land is acquired as the time for ascertaining its value. Independently of that provision it would lead to very strange and capricious results if changes in the conditions of the land between the time when it was taken and the actual conclusion of the award were to increase or lessen its value. The time of awarding compensation must be construed as meaning the time of compensation, the time at which the right to compensation attaches."

Speculations as to the effects which any suggested developments may produce on prices must be excluded, except to the extent to which it is shown that such speculation had actually entered into the market-price of the land to be acquired at the date of the declaration. Where, therefore on the date of such declaration there is a scheme of development of the town and that was known generally, enhancement in the value of the market-rates consequent on such development must be taken into account for determining the market-value of the land to be acquired, (c). The purpose for which the land is acquired should not influence the award of compensation, (d). Compensation should be awarded in L. A. proceeding on the basis of the value to the owner of the property in its actual condition at the time of expropriation with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property

(a) *Secretary of State for Foreign Affairs v. Charlesworth Pilling & Co.*, 26 Bom. 1 (23) (P. C.) : 5 C. W. N. 35n and 138n.

(b) *Manmatha Nath Mitter v. Secretary of State*, 25 Cal. 195 (P. C.).

(c) *Marwari Padamji v. Deputy Collector of Adoni*, 27 M. L. J. 106 : 24 I. C. 141.

(d) *Secretary of State v. Basawa Singh*, 17 I. C. 764 : 57 P. R. 1913 : 19 P. W. R. 1913.

is compulsorily acquired, (e). The circumstance that the land under acquisition may be put to non-agricultural use after it is acquired by the State has to be ignored under Sn. 24 and compensation cannot be awarded to the claimant on that account. (f).

Clause(6) ; Prospective increase in value of other land :—In determining the amount of compensation to be awarded for land acquired under Act I of 1894, the court shall not take into consideration any increase to the value of the *other land* of the person interested likely to accrue from the use to which the land acquired will be put.

This clause contemplates acquisition by the Government of the "other land" besides the "land acquired" in cl. (5) of a person interested. In valuing such "other land" it is not open to the claimant to urge that there has been or is likely to accrue an increase to the value of the other land from the use to which the land acquired will be put nor is it open to the court to take into consideration any such increase in the value of the other land in determining the amount of compensation to be awarded in case of acquisition of such other land by virtue of section 49 or any other provision of law, (g). In certain land acquisition proceedings the claimant contended that in the determination of the value of the land he is entitled to have a higher value put upon his land in consequence of the intention of Improvement Trust to keep a previously acquired piece of land to the immediate west as an open space. It was held that as the Improvement Trust authorities intended to keep the previously acquired plot as an open space in order that it might be annexed to the land now under consideration and both amalgamated with an existing open square, the benefit which might accrue to the purchaser from the expression of intention of the Improvement Trust authorities, if carried into effect, would immediately result in the destruction of his rights as purchaser. The claimant was, therefore, not entitled to any enhanced value by reason of the intention of the Trust to keep the adjoining land as an open space (g).

When Government notified its intention to acquire for a market and shortly after notifies its intention to acquire land immediately adjoining such land as a reserve for market purposes, the first notification must be deemed to have occasioned an increase in value of the land dealt with in subsequent notification. But when Government requires land which is quarter of a mile or more away from the land required for the market, no rise in value can be deemed to have taken place in such land, (h).

When a strip of land out of a bigger plot is acquired for widening a lane, the acquired strip should be valued as part of the claimant's plot whose part it formed taking into account its value to the owner with all its advantages and potentialities. The Court has to find the average rate per cottah of main plot and value the acquired strip accordingly. Further widening of

(e) *Pandurang Fate v. Collector of Nagpur*, 108 I. C. 745.

(f) *Vakratunda Chintaman Deo v. Special L. A. Officer*, A. I. R. 1960 Bom. 232.

(g) *Manmatha Naih Mullick v. Secretary of State*, 28 C. W. N. 461.

(h) *Secretary of State v. Govind Ram*, 11 I. C. 838.

the lane can not be taken as a benefit accruing to the main land and so to an increase in valuation of main land (i).

Exceptions to Sn. 24 (6) :—Sn. 64(1) of the City of Bombay Improvement (Transfer) Act, 1925 provides that, "The Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building."

See also Sn. 78 of the Calcutta Improvement Act 1911 and provision in the Calcutta Improvement (Amendment) Act VII of 1931.

Clause (7) ; Costs of improvements after notification :—A claimant whose land is acquired is not entitled to claim any cost incurred in any manner, whatever, either for preservation, maintenance or improvements of the same after the publication of the declaration under section 6 (now section 4) unless made or effected with the sanction of the Collector.

Disposal of the land acquired :—It should be noted that the clause does not mean that when there is a transfer by sale etc., of the land acquired, the claim of the transferee to compensation money need not be considered. What this clause means is that, for the purpose of determining the compensation after considering the valuation etc., a transfer after notification under s. 4 should not influence the amount of compensation or valuation. Transactions after notification when they involve the question of title to receive the compensation, must be taken into account for purpose of apportionment, (j). The view that when an owner after the date of declaration executed a conveyance transferring all his interests to the purchaser claimant, the latter had no locus standi, was overruled and it was held that he is a person interested and as such was entitled to dispute the valuation by reference, (k). It is also provided by the said section that any disposal of the land by way of sale, mortgage, gift, exchange or lease or in any other manner contrary to the provisions of the section and after the date of the publication of the declaration under section 6 (now sec. 4) without the sanction of the Collector, is altogether to be excluded from consideration by the Court and is not to be recognised in determining the value of the land. Lord Lindley in (l), lays down that "the broad principle appears to be that it is not competent for an owner of land who has received notice to treat to deal with any of his land either taken or injuriously affected by the company, so as to increase the burden of the company as regards the compensation to be made in respect of such land or any part of it." It must be regarded as a settled rule of law that there can be but one proceeding for compensation, and that after notice to treat no onerous interests whether in the land taken or in that injuriously affected can be created by the owner to the prejudice of the company. An owner after receipt of the notice to

(i) *State of W. B. v. Bibhuti Bhushan Chatterjea*, A. I. R. 1959 Cal. 572.

(j) *Nrisinha Chandra Nandi Chowdhury v. Nagendra Bala*, 60 Cal. 281 : A. I. R. 1933 Cal. 522 : 37 C. W. N. 14.

(k) *J. C. Galstam v. Secretary of State*, 10 C. W. N. 195 : [also see notes under s. 3 cl. (b)].

(l) *Mercer v. Liverpool St. Helens & South Lancashire Ry.*, (1904) A. C. 461 : (1903) 1. K. B. 652.

treat, agreed to let the property for three years to a person who had previously occupied part of it as a weekly tenant. But it was held that the tenant could not recover any compensation from the undertakers. Romilly, M. R. said : "I am of opinion that the owner's power of dealing with his property is concluded when the notice to treat is served, and that the lease granted subsequently to that period to a tenant cannot properly be compensated for" (m).

Local Act :—In the Calcutta Improvement Act 1911 clause 10 of the Schedule runs thus : "Any outlay on additions or improvements were necessary for the maintenance of any building in a proper state of repairs." Similar provision is in cl. (12), of the Schedule in the U. P. Town Improvement Act and cl. (11) of schedule in the Berar Act V of 1920. So also sec. 64(2) of the City of Bombay Improvement Trust (Transfer) Act 1925. The material date in these Acts is the date of declaration under sec. 6.

It may be noted that improvements are not normally taken into consideration by Court, yet it appears necessary that sec. 24 cl. 7 should recognise an exception whereby improvements necessary for the maintenance of the building in a proper state of a repair may be taken into consideration. Court should also have power to disregard any increase in market value by reason of the acquired property being put to use in a manner which is contrary to law or detrimental to the health or interests of the public. This is also the view of Law Commission of India.

25. Rules as to amount of compensation.

(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

State Amendments

Uttar Pradesh.—U. P. Act XXII of 1954, S. 2 and Sch. Para 9. (19-11-54). From sub-section (1) of s. 25 delete the words "or be less than the amount awarded by the Collector under s. 11."

(m) *Exparte Edwards*, (1871) L. R. 12 Eq. 389.

Mysore.—By the *Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961*.

(See under Part III, Chapter X).

Punjab.—By the *Land Acquisition Punjab Amendment Act 17 of 1962*.

3. Amendment of section 25 of Central Act I of 1894. In sub-section (1) of section 25 of the principal Act, the word “or be less than the amount awarded by the Collector under section 11” shall be *omitted*.

Old section :—This was sec. 26 of the old Act X of 1870 which ran as follows :—

“26. Where the person interested has made a claim to compensation, pursuant to any notice mentioned in section 9 or in section 19, the amount awarded to him shall not exceed the amount so claimed, or be less than the amount tendered by the Collector under sec. 11.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands before he gives his opinion as to the amount of compensation to be awarded under the Act.”

Notes

Clause (1) : Limited power of Court :—Section 25, cl. (1) provides that in cases of reference to Court under section 18 for valuation the court shall not award (1) more than what has been claimed or (2) less than what has been awarded by the Collector *i. e.*, Court has no jurisdiction to reduce the award of the Collector nor has it any jurisdiction to award more than what has been claimed. Section 25 presupposes service of notice under section 9 and filing of claim by the owner in pursuance of that notice.

Section 25 applies only to claimants and their legal representatives :—Section 25 was designed with the purpose of holding claimants to their own bargains and of preventing demands being increased at every stage from the Collector to the High Court. The word “applicant” in the section is used to describe the persons who puts in a written application under section 18 for having his objection to the Collector’s award referred for determination by civil court. He is not necessarily identical with the person who makes a claim after notice under section 9. All that section 18 requires is that he should be a person interested who has not accepted the award, and “person interested” is defined in section 3 as including every person claiming an interest in compensation to be made on account of the acquisition. Under section 25 claimants are estopped from getting more from the Judge than what they claimed before the Collector, and on the same principle their legal representatives would no doubt be bound. But although a widow represents her deceased husband’s estate for certain purposes and has limited powers

of disposal over it, the reversioners are not her legal representatives nor are they bound by her acts on any principle of estoppel. In case of reversioners the Judge should not consider his award as limited to the amount claimed before the acquiring officer (a).

Court's power to award in excess of the claim :—A claimant made a claim to compensation pursuant to the notice given under section 9, to the sum of Rs. 2,200/- for the construction of a wall. The Collector made an award allowing Rs. 524/- only for the same. In the petition for reference the claimant wanted compensation to the extent of Rs. 6,825/- for constructing and raising the wall. Subsequently a petition for amendment of the application for reference under section 18 was made and the amount of claim was raised to Rs. 25,000/- and this amount was claimed as cost for erecting the wall in question. It was held : "Having regard to the provisions of section 25, cl. (I) it is quite clear that it was not permissible to the L. A. Judge to award a sum in excess of that claimed by the applicant provided the claimant had the notice served on him under section 9." (b).

The rule that a Court cannot award more than what has been claimed does not apply in England where the acquisition is made under the Acquisition of Land Act, 1919. In (c). Channel J. said that it was clear that when a claimant had stated the subject-matter of his claim he could not put before the jury a claim in respect of a new subject-matter. He could not find anything in the statute which said that when a jury thought that a claimant was entitled to more than he had claimed in respect of a subject-matter brought to the notice of the company they might not award him more than he had claimed. Of course, if the jury did so to an extravagant amount, there were methods by which their verdict could be set aside ; but if they acted reasonably he could see no reason why they might not be able to award a sum in excess of the sum claimed. He was satisfied that there was no principle which prevented a jury, when a claimant had split up his lump sum into items, from giving more in respect of any one item than was actually claimed for the item, provided they did not exceed the whole sum claimed.

Section 25 (I) lays down that the amount awarded shall not exceed the amount claimed. This means that it is the total claim that may not be exceeded and not the claim under any particular head. To expect an owner to correctly classify the heads under which compensation can be granted and to penalise him for wrongly estimating the separate items would obviously be inequitable (d). It would appear that section 25 was intended to refer to the whole claim made by the claimant, and the whole amount of compensation awarded to him under section 11 and to empower the Judge to alter the award of the L. A. Officer under any one or more of the sub-

(a) *Gattineni Peda Goppayya v. The Deputy Collector of Tenali*, 47 M. L. J. 298 : I. L. R. 45 Mad. 421.

(b) *Prasanna Kumar Dutt v. Secretary of State*, 38 C. W. N. 239.

(c) *Robertson v. City and South London, Railway Co.*, 20 T. L. R. 395.

(d) *Indo-Burma Petroleum Co. v. The Collector of Yenangyong*, 4 Bur. L. T. 250 ; 12. I. C. 202.

heads of section 23 by either decreasing or increasing the amount awarded, provided he did not award less than the total amount awarded by that officer or more than the total amount claimed before that officer by the claimant. The award of the District Judge on a particular item although in excess of that awarded by the L. A. Officer, is not without jurisdiction if the total amount awarded by him does not exceed the amount claimed by the claimant (e).

The words "at least" appearing in the headings of claim means that minimum claim was made and a claimant is not restricted to different items although he might be held limited to the amount claimed for entire property (f).

Court's power to award less than the Collector's award :—It is with reference to sec. 25 (I) that the Privy Council points out that "they are precluded by the Act from awarding less than the amount awarded by the Collector." (g). Where the District Judge having confirmed the Collector's award, subsequently, on application made by the Government pleader, reviewed his award and made a fresh award reducing the amount awarded by the Collector it was held that an appeal would lie against the revised award under s. 54 of the L. A. Act, (h). The rule that under the Act the Court is not entitled to award as compensation to a claimant, an amount less than the amount offered by the Collector is not infringed if the Court decreases the amount of market-value of the land and awards additional compensation for severance under section 23(1) (iv), provided that the total amount awarded is not less than the amount awarded by the Collector, (i). The only limitation on the powers of the Courts is that laid down in s. 25 (1), which precludes the reduction of that total award granted by the Collector. Where the District Judge added a considerable item to the Collector's award, but disallowed an item which had been included therein with the result that the total award was increased, it was held that the District Judge has power to do that, (j).

Clause (2) ; Court's power in case of refusal or omission to claim :—It is intended by section 9. cl. (2) of the Act that the owner of the property about to be acquired should appear and state his claim in the manner provided by the clause, so as to enable the acquisition officer to make a fair, reasonable and proper award based upon a proper enquiry after the proper means have been placed before him for holding such enquiry. Section 25, clause (2) makes the refusal or omission to comply with the provisions of section 9 (2) without sufficient cause an absolute bar to the obtaining of a greater sum

(e) *Secretary of State v. F. E. Dinshaw*, 27 S. L. R. 84 : 146, I. C. 1040 : 1933 A. I. R. (Sind) 21.

(f) *Pramatha Nath Mullick v. Secy. of State*, (1930) A. I. R. (P.C.) 64 : 57 I. A. 100 followed. *Charu Prokash Ghosh v. State of West Bengal*, I. L. R. 1967 (2) Cal. 1.

(g) *Rangoon Botaturning Co. v. Collector of Rangoon*, 40 Cal. 21(26) (P. C.).

(h) *Chander Lal v. Collector of Bareilly*, 44 A. 86 : (1921) A. L. J. 871.

(i) *Bai Jadav v. Collector of Broach*, 28 Bom. L. R. 559 : (1926) A. I. R. (B) 372 : 96 I. C. 316 ; *Gangadora Sastri v. Deputy Collector, Madras*, 22 M. L. J. 379 : 14 I. C. 270.

(j) *Sujan Singh v. Secretary of State*, 1936 A. I. R. (Pesh) 217.

than that awarded by the Collector, (k). Where the claimants did not put in their claims at the time required by the notice under s. 9, but did so later the amount which the court can award is governed by sec. 25 (1), (l). Section 25 (2) presupposes service of notice under section 9 and the refusal of the claimant to comply with the requisitions contained therein. The onus is upon the Collector to prove due service of notice, under section 9, upon the claimant. Where no claim pursuant to a notice under section 9 of the L. A. Act was made by a party interested to make a claim, it was held that the L. A. Judge under section 25 sub-section (2) had no power to make an award for an amount exceeding that awarded by the Collector unless the claimant satisfied him that he had *sufficient reason* for refraining from making his claim in due time. The Judge should state his reasons for allowing such a person to prefer his claim, (m).

In a proceeding under the L. A. Act where a person was summoned to appear on a particular date before a L. A. Officer but did not turn up on the particular date or make any claim in response to the notice issued under sections 9 and 10 of the Act but however filed copies of two sale deeds at a subsequent date and the claimant was dissatisfied with the award made by the L. A. Officer and asked for a reference to the court, the court cannot enhance the amount of the award as the claimant has not put in a claim for any specific amount as required by sections 9 and 25 (2) of the Act. The Act requires that there should be a specific claim, a claim which states in rupees the value the claimant places upon his property, (n). In *Oriental Bank v. The Secretary of State*, as the bank did not state the specific amount of compensation claimed by it, the District Judge was held incompetent under sec. 25 (2) to award a sum exceeding the amount awarded by the Collector, (n).

Court's duty to enquire into sufficient reason for refusal or omission to claim :—It is the duty of the Dist. Judge to apply his mind to the consideration of the question as to whether the failure of the claimant to specify the amount of his claim was with or without sufficient cause and whether he would be prepared to condone such omission, Where the Dist. Judge fails to apply his mind to the consideration of the question as to whether the failure of the claimant to specify the amount of his claim was with or without sufficient cause and whether he would be prepared to condone such omission the appellate court can consider that question and condone the omission provided that there are sufficient grounds, (o).

Absence of proper notice is sufficient reason :—Non-service of notice under section 9 of the L. A. Act amounts to *sufficient reason* under section 25 of the Act for omitting to file proper claims before the Collector, (p). When a public notice under section 9(2) of the L. A. Act was issued more than

(k) *Secretary of State v. Bishan Dat*, 33 A. 376.

(l) *L. A. Officer v. Fakir Mahomed*, 143 I. C. 699 : 1933 A. I. R. (S) 124.

(m) *Secretary of State v. Gobind Lal Bysack*, 12 C. W. N. 263.

(n) *Subanna v. District Labour Officer, East Godavari*, 1930 M. W. N. 373. *Oriental Bank v. The Secretary of State*, 7 L. 416.

(o) *Secy. of State v. F. E. Dinshaw*, 1933 A. I. R. (S) 21.

(p) *Burn & Co. v. Secretary of State*, 76 I. C. 579 ; (1923) A. I. R. (C) 513,

6 weeks prior to the date fixed for hearing of applications by Collector and another notice was personally served on the applicant 11 days before the said date and on applicant's failure to make any claim, the Collector made an award, it was held that as both the notices were valid the District Judge was precluded from increasing the amount of the award fixed by the Collector, under section 25(2), (g).

In (r), a notice under sec. 9 of the L. A. Act had been served on 24-2-26 requiring the persons interested to appear on 4-3-26 to state the nature of their claims. No claim was filed. After the Collector made his award the claimant applied for a reference to Court which was made. Before the Judge the claimant applied for being allowed to make a claim under s. 25, sub-sec. (2) of the Act, but his application was rejected. It was held that "the notice was bad in law, as there was no clear 15 days' notice and the provisions of s. 9 of the Act not having been strictly followed as regards the service of notice, it was not possible to apply the penal provision of s. 25 of the Act in order to prevent the claimant from putting forward his claim before the Judge under L. A. Act." Sec. 9 (3) which enacts that "the Collector shall also serve notice to the same effect" on the occupier and others interested in the land, means that there must be in the case of such personal notices an interval of at least 15 days as in the case of a public notice under section 9(2), between the date of the service of such notices and the date when they are required to state their objections and claims. It is only when such interval has been given by the notices under section 9 (2) and (3) that the stringent provisions of sec. 25 (3) can be applied, (s).

The condition precedent to the imposition of penalty under sec. 25 is the service of notice under sec. 9. It is for the State to prove that the notice was served on those who have denied service of notice or the knowledge of the proceedings in time for an objection (i).

Condonation by the Collector is sufficient reason :—Where a claimant failed to specify the amount of his claim before the L. A. Officer in the belief that he was not required to do so, such belief would indubitably afford a sufficient ground for condonation and more so, when the claimant had placed materials showing what his expert considered to be a fair compensation and the L. A. Officer dealt with the claim on the materials placed before him without demur and without requiring the claimant to make the claim more specific. *Secy. of State v. F. E. Dinshaw*, *ibid.* When a claimant appears but not on the date fixed in the notice, it cannot be said that he is not entitled to file any claim before the Collector. The cases of *Secretary of State v. Gobind Lal Bysack*, (u), and *Secretary of State v. Bishan Dat*, (v), are distinguishable, for in these cases the objector never appeared

(q) *Birbal v. The Collector of Moradabad*, 25 A. L. J. 144.

(r) *Tara Prasad v. Secretary of State*, 34 C. W. N. 323.

(s) *Venkatarama Ayyar v. The Collector of Tanjore*, 53 Mad. 921 : 60 M. L. J. 420 : 128 I. C. 147 : 1930 A. I. R. (M) 836 : *Dist. Labour Officer v. Veeraghanta*, 59 M. L. J. 911 : 129 I. C. 251 : 1931 A. I. R. (M) 50.

(t) *Sushila Devi v. State of Bihar*, A. I. R. 1963 Pat. 469.

(u) *Secretary of State v. Gobind Lal Bysack*, 12 C. W. N. 263.

(v) *Secretary of State v. Bishan Dat*, 33 A. 376 : 8 A. L. J. 115 : 9 I. C. 423.

or made any claim prior to the award. It cannot be said that the claimant omitted to make a claim pursuant to the notice given under section 9 merely because he did not make it by the date originally fixed in the notice. Proceedings before the Collector was adjourned from time to time and that the claim, if any, made before the award was a claim pursuant to the notice under section 9. At any time before giving his award the Collector has jurisdiction to deal with claims made to him under section 9(2) of the Act, (w). In a case under the L. A. Act (1 of 1894) the owner's claim was not filed until after the period prescribed therefor, but no objection was taken on that score before the Collector. It was held that it was too late to raise the objection when the case had come in reference before District Judge, (x).

Clause (3) ; Court's power in case of omission to claim for sufficient reason :—Clause (3) of sec. 25 follows as a corollary to section 25(2). It provides that if the court is satisfied that there was sufficient reason for the filing of the claim in terms of the notice under section 9 the court may award a sum in excess of the amount awarded by the Collector. If the Court is satisfied that there were sufficient reasons for not filing the claim or that the claimant was prevented by sufficient reason from filing his claim the jurisdiction of the court is not limited by section 25 (2), that is, the jurisdiction to decide the market-value of the land acquired at the date of the publication of notification under section 4 (I) and to award the same even if it exceeds the amount awarded by the Collector, is not fettered in any way.

In a land acquisition proceeding, notice under section 9 was served on the appellant directing him to appear before the Deputy Collector on a certain date to make a statement and to give particulars of his claims. He appeared before the Deputy Collector on that date and probably made some verbal statements. On the following day he filed a petition stating his claim and about a month after the award was made. It was held that the petition filed on the following day should be regarded as a sufficient compliance with the notice under section 9 of the Act or alternatively should be regarded as a sufficient reason for allowing the appellant to come in under cl. (3) of section 25, (y). Where the notification of the Government was defective as therefrom it was not possible to locate the position and no facilities were given to the claimant for identifying the land and where the notice issued under section 9 was defective in that it did not give 15 days' time, it was held that the applicant's omission to claim was for sufficient reason within sec. 25 (3), (z). Where a claimant objected to the amount of compensation offered by the Collector, but withdrew his objection before the District Judge, who, however, allowed an increased amount at the instance of other objectors, it was held, that under Act I of 1894 the former did not disentitle him from

(w) *Secretary of State v. Sohan Lal*, 44 I. C. 883.

(x) *Lachman Prasad v. Secretary of State*, 43 A. 652.

(y) *Gyanendra Nath Pal v. Secretary of State*, 25 C. W. N. 71.

(z) *Collector of Chingleput v. Kadir*, 50 M. L. J. 566 : 95 I. C. 883 : 1926 A. I. R.

(M) 732.

claiming the benefit of the increased amount awarded by the Judge, (a). A notification under section 9 of the L. A. Act was sent to the claimant by registered post so that he could make his claim for compensation. The claimant was a religious head and a Guru and did not attend to the business affairs himself, but had a manager for that purpose. The notice was addressed to him at his residence ; the receipt for it was signed by his clerk who passed on the notice to the claimant's manager. No steps were taken on the notice and there was no appearance. It appeared that the manager was guilty of mismanagement and was dismissed and he did not inform the Guru about the notice. It was held that the claimant had shown "sufficient reason" within the meaning of section 25 L. A. Act for not appearing before the Collector pursuant to section 9, (b).

Court's power in case of omission to claim damages under sec. 23 :

—All that section 9 requires is that a person claiming an interest in the land under acquisition should (1) specify the interest he claims, (2) specify the amount he claims for such interest and (3) give particulars of his claim to compensation. It does not go further than that and does not require him to specify the amount of compensation he claims in respect of each of the six sub-heads referred to in sec. 23 of that Act. A failure, therefore, to specify the amount claimed in respect of any particular sub-head of sec. 23 is no bar to the judge reviewing the award of the L. A. Officer in respect of such sub-head, (c). Under sec. 25 the judge has a discretion to raise a question as to damages for severance before him if sufficient reason is shown though such a claim was not made before the Collector. There is nothing in sec. 49 requiring the claimant to put forward the claim that the whole house should be acquired at any particular stage of the proceeding. Cl. (1) sec. 49 cannot be relied on to show that the owner should make this kind of claim before the award is made, (d).

Court's power in case of omission to claim statutory allowance under sec.

23 (2) :—Award of 15 per cent on market-value on compulsory acquisition is a statutory amount of compensation in addition to the market value ; and the Court has no power to deprive a claimant of that amount on the ground that he has not previously claimed it specifically. The provisions of sec. 23 (2) are imperative and the District Judge has no discretion in the matter, nor is the right of the claimant to receive 15 per cent in addition to the market-value dependent on his having previously claimed it, (e).

(a) *Nabin Chandar Sharma v. Deputy Commissioner, Sylhet*, 1 C. W. N. 565.

(b) *Ranchhodlalji v. Acquisition Officer, Ahmedabad*, 46 Bom. L. R. 696 : 218 I. C. 187 : A. I. R. (1945) Bom. 49.

(c) *Secy. of State v. F. E. Dinshaw*, 1933 A. I. R. (S) 21.

(d) *Secy. of State v. R. Narayana Swami Chettiar*, 55 Mad. 391 : 138 I. C. 426 : 1932 A. I. R. (Mad.) 55.

(e) *Muhammad Sajjad Ali Khan v. Secy. of State*, 145 I. C. 526 : 1933 A. I. R. (All.) 742.

Form of award

26. ¹[(1)] Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

[(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908].

State Amendments

Mysore.—By The Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961.

[See under Part III, Chapter X].

Notes

This was section 34 of the old Act X of 1870 which ran as follows :

Award to be in writing :—"34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of section 24, and also the amounts (if any) respectively awarded under the second, third and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

Award to state amount of cost :—It shall also state the amount of costs incurred in the proceeding under this Part and by what persons and in what proportions they are to be paid.

Recovery of costs :—The costs (if any) payable by the person interested and not deducted under section 42 may be recovered as if they were costs incurred in a suit, and as if the award were the decree therein."

Amendment :—Sub-section (2) has been added by sec. 2 of the Land Acquisition (Amendment) Act XIX of 1921. By the said sec. 2 of Act XIX of 1921 the section has been amended in the following terms : Section 26 of the Land Acquisition Act, 1894, (hereinafter referred to as the said Act) shall be renumbered 26 (1) and to the said section the following sub-section shall be added namely, (2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, cl. (2), and section 2, cl. (9) respectively, of the Code of Civil Procedure, 1908."

Clause (1) ; Award :—The term "award" has not been defined in the Act. But if the sections in which the word occurs are referred to, it is noticeable

¹ Section 26 was renumbered s. 26 (1), and sub-section (2) was added by s. 2 of the Land Acquisition (Amendment) Act, 1921 (19 of 1921).

that in all cases the word is used with reference to compensation in some form or other whether it be the amount of compensation or the disposal of compensation. The first formal order to which the term "award" is applied in the Act is that of the Collector under sec. 11 and sections 26 and 27 provide for the form of award to be made by the Judge, (f). Under the L. A. Act there are two perfectly separate and distinct forms of procedure contemplated. The first is that for fixing the amount of the compensation and this is described as being an award. The award as constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under sec. 31 (2) the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interests. Such dispute forms no part of the award. In (g) following an earlier case, it was decided that an order under section 32 may appropriately be deemed as an integral part of the award made by the court, but this is a misapprehension as to the meaning of the award, (h). Many decisions which can be made under the L. A. Act are not "awards", for example, an order made under sec. 32 is not an award, (i).

Difference between Collector's award and award by Court:—It is to be noted that the award of the Court (as defined in sec. 26) is not the same as an award by the Collector under sec. 11. An award by the Collector under sec. 11 must include the apportionment of the compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims he has information whether or not they have respectively appeared before him. That forms no part of the award as defined in sec. 26, (f). Although sec. 26 requires the Judge to specify in his award the amount awarded under cl. (i), sub-sec. (1) sec. 23 and also the amounts, (if any) respectively awarded under each of the six sub-clauses of the same sub-sec., sec. 11 does not require the L. A. officer to make his award in that manner. It is sufficient for him to state what he considers to be fair compensation to be allowed for the whole of the land under acquisition and how it should be apportioned, (k).

Award shall specify compensation :—When land is acquired compulsorily under the provisions of the L. A. Act, compensation must be awarded in respect thereof, it being beyond the competence of the Collector or the Special Judge to hold that there is no interest in the land to be acquired for which compensation is payable. Land held by a tenant under Government

(f) *Sarat Chandra Ghose v. The Secy. of State*, 23 C. W. N. 378.

(g) *Sreemati Trinayani Dassi v. Krishna Lal De*, 17 C. W. N. 935, *Balaram Bhramavatar Ray v. Sham Sunder Narendra*, 23 Cal. 526.

(h) *Ramachandra Rao v. Ramachandra Rao*, 49 I. A. 129 : 45 Mad. 320 (P. C.) : 43 M. L. J. 78 : 26 C. W. N. 713 : 24 Bom. L. R. 963.

(i) *Mahant Bhagavathi Doss Bavaji v. Sarangaraja Iyengar*, 54 Mad. 722.

(j) *K. N. K. R. M. K. Chettyar Firm v. Secy. of State*, 1933 A. I. R. (Rang.) 176 (179).

(k) *Secy. of State v. F. E. Dinshaw*, 27 S. L. R. 84 : 146 I. C. 1040 : 1933 A. I. R. (Sind) 21.

was acquired under the provisions of the L. A. Act. There was a covenant in the kabuliati of the tenant that he would give up the land without compensation if the Government required it. It was held that whatever the rights of the tenant might be, his land must be assessed and compensation awarded to him under the provisions of section 23 read with section 26 of the L. A. Act and that when such compensation has been assessed and awarded, a question of apportionment would arise between the Government on the one hand and the claimant on the other, but that the award of the Collector or the Special Judge without assessment of compensation for the land could not be a valid award, (l).

The Law Commission's Report suggests that the market-value for each item may also be specified in the award.

Clause (2) ; Were awards decrees ? Conflict of views :—In the Full Bench case of *Nilkant Gonesh Naik v. The Collector of Thana*, (m), it was held that the Land Acquisition Act (X of 1870) did not provide for or contemplate an award for compensation being enforced against the Collector by execution proceeding and there is no general law which enables a Civil Court to enforce such a statutory liability when imposed upon a Collector or other Civil Officer by means of execution proceedings. This view was followed in, (n), in which it was held that "an award under the L. A. Act I of 1894 was not decree or order capable of execution under the Civil Procedure Code, V of 1908." An award made under Part III of the L. A. Act was held to be neither a decree nor an order and section 14 of the Lower Burma Courts Act, which provides for appeals from decrees and orders made by a single Judge, exercising Original Civil Jurisdiction of the Chief Court does not apply in such cases, (o).

But in *Zamindars of Dhor v. Rana*, (o-1) it was decided that an adjudication made by a Court as to compensation or apportionment of compensation is tantamount to a decree within the meaning of section 2 of the Civil Procedure Code and capable of execution. Following this judgment of the Punjab Chief Court the Bombay High Court in (p) held that "reading together sections 53 and 54 of the Land Acquisition Act with section 96 of the Civil Procedure Code, it must be taken to have been the intention of the legislature to put awards under the Land Acquisition Act on the footing of decrees". In (q), it was held that an award is a decree or order of a Civil Court within Rule 2 of the Appellate Side Rules of the High Court framed under the powers given by the C. P. C. In (r), there was an order of refund and the question raised was whether the order for refund could be enforced as in execution of a decree. The High Court held that

(l) *Bijoy Kumar Addy v. Secretary of State*, 25 C. L. J. 476 : 39 I. C. 889.

(m) *Nilkant Gonesh Naik v. The Collector of Thana*, 22 B. 802.

(n) *Loddah Ebrahim v. The Assistant Collector, Poona*, 35 B. 146 : 12 Bom. L. R. 839 : 8 I. C. 166.

(o) *Collector of Rangoon v. Chandrama*, 28 I. C. 260.

(o-1) *Zamindars of Dhor v. Rana*, P. R. 53 of 1906, p. 205.

(p) *Nathubhai v. Manordas*, 36 B. 360.

(q) *Manavikraman Tirumalpad v. The Collector of the Nilgiris*, 41 Mad. 943.

(r) *Nabin Kpli Debi v. Banalata*, 32 C. 921.

"the order directing a refund may be enforced by the imprisonment of the party against whom it is made or by the attachment and sale of his property under sections 254 and 649 of the Civil Procedure Code 1882."

The Judicial Committee of the Privy Council in (s), observed : "As Lord Bramwell observed in the case of *Sandback Charity Trustee v. The North Staffordshire Railway Company*, (s-1) an appeal does not exist in the nature of things. A right of appeal from any tribunal must be given by express enactment. A special and limited appeal is given by the Land Acquisition Act from the award of the Court to the High Court. No further right of appeal is given. Nor can any such right be implied.... Their Lordships cannot accept the argument or suggestion that when once the claimant is admitted to the High Court he has all the rights of an ordinary suitor including the right to carry an award made in an arbitration as to the value of the land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its ordinary jurisdiction."

To remove the anomaly created by the above Privy Council decision and to place the "award" of courts beyond all doubts in the same category as "decree", sub-section (2) has been added by Act XIX of 1921, (t). There is clearly a distinction between an "award" within the meaning of the L. A. Act and a "decree". Many decisions which can be made under this Act are not "awards". Section 54 clearly distinguishes between "decree" and "award". The judgment of a Land Acquisition Court when that Court is constituted by the appointment of a "special judicial officer" is not an "award" but a "decree", (u), it has been held that the award is deemed to be a decree and is executable as such only under Sec. 26(2) of the Act as if it were a Civil Court Decree and it is not necessary to sue for a decree on the basis of the award.

No suit lies against award :—When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special court for the investigation of matters which may possibly be in controversy such jurisdiction is *exclusive* and can not concurrently be exercised by the ordinary courts, (v). The Act creates a special jurisdiction and provides a special remedy, and ordinarily when jurisdiction has been conferred on a special court for the investigation of matters which may possibly be in controversy, such jurisdic-

(s) *Rangoon Botatoung Company Limited v. The Collector, Rangoon*, 39 I. A. 197 : 40 C. 21 : 12 M. L. T. 195 : 16 C. W. N. 961 : (1912) M. W. N. 781 : 16 C. L. J. 245 : 23 M. L. J. 276 : 14 Bom. L. R. 833 : 10 A. L. J. 271 : 5 Bur. L. T. 205 : 16 I. C. 188 : 6 L. B. R. 150 (P. C.).

(s-1) *Sandback Charity Trustee v. The North Staffordshire Ry. Coy*, (1877) L. R. 3 Q. B. D. 1.

(t) *Lala Narsingh Das v. The Secy. of State*, 6 Lah. 69 (P. C.) : 29 C. W. N. 822 : 1926 A. I. R. (P. C.) 91.

(u) *Mahant Bhagavathi Doss Bavaji v. Sarangaraja Iyengar*, 54 Mad. 722. In *State v. Abdul Rehman*, A. I. R. 1960 J. & K. 59.

(v) *Maharaja Sir Rameswar Singh v. The Secretary of State*, 34 C. 470 : 11 C. W. N. 356 : 5 C. L. J. 669.

tion is exclusive and the ordinary jurisdiction of the civil court ousted. (w). No Civil Court has any jurisdiction to go into any question decided under the L. A. Act. A person who having been made a party to a reference under the L. A. Act had the opportunity and duty of litigating his claim before the Special L. A. Judge but did not then press his claim to any part of the compensation, is not entitled to come again to the Civil Court and reopen the question, (x).

Appeal against award :—Whatever doubts there might have been regarding appeals against awards of a court exercising jurisdiction under the L. A. Act, 1 of 1894, after the decision of the *Rangoon Botatoung Company, Limited v. The Collector of Rangoon*, (x-1), the matter has been set at rest by the amendments made by the Amending Act XIX of 1921 in sections 26 and 54. "Under sections 26 of the L. A. Act the awards of a District Judge contains both a decree and a judgment." (y). Under section 54, as amended by Act. XIX of 1921, all awards are made appealable both to the High Court and the Judicial Committee subject to the provisions contained therein. *Vide* Notes under section 54, *infra*.

The Supreme Court in an appeal from an award granting compensation, has held that it will not interfere unless there is something to show that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied, (z).

Remedy when the Court refuses to make an award :—There is strictly speaking no right of appeal against an order of the District Judge declining to make an award on a reference under section 18 of the L. A. Act. But the order refusing to make an award and remanding the case to the Collector clearly involves a material irregularity in the exercise of the special jurisdiction, which gives power to the High Court to interfere in revision with that order, (a).

Letters Patent appeals against awards :—"By the amending Act of 1921, the awards of Courts made in Land Acquisition cases were placed in the same category as decrees and awards are now after the passing of the amending Act, decrees or orders of Civil Courts ; and the statements of the grounds of such awards are judgments within the meaning

(w) *Bhandi Singh v. Ramadhin Roy*, 10 C. W. N. 991 : 2 C. L. J. 20n ; *Stevens v. Jeacocke*, (1848) 11 Q. B. 731 ; *West v. Downman*, (1880) 14 Ch. D. 111 ; *Ramachandra v. Secretary of State*, 12 M. 105 ; *Saibesh Chandra Sarkar v. Sir Bejoy Chandra Mahatap*, 26 C. W. N. 506 : 65 I. C. 711.

(x) *Ranjit Sinha v. Sajjad Ahmad Choudhury*, 32 I. C. 922 ; *Secretary of State v. Quamar Ali*, 16 A. L. J. 669 : 51 I. C. 501 ; *Kasturi Pillai v. Municipal Council, Erode*, 43 M. 280 : 37 M. L. J. 618 : 26 M. L. T. 268 : 10 L. W. 366 : 53 I. C. 646.

(x-1) *Rangoon Botatoung Co. Ltd. v. The Collector of Rangoon*, 40 C. 21 (P. C.)

(y) *Mubarak Ali Shah v. Secretary of State*, 6 Lah. 218 : 94 I. C. 145 : 1925 A. I. R. (L) 438.

(z) *The Special L. A. Officer, Bangalore v. Adinarayana Setty*, A. I. R. 1959 S. C. 429 : (1959) S. C. J. 431.

(a) *Revenue Divisional Officer v. Valia Raja*, 57 L. W. 467 : (1944) 2 M. L. J. 130 : A. I. R. (1944) Mad. 539.

of the Code of Civil Procedure" (b). The question for consideration now is, whether a judgment in a Land Acquisition case is a judgment as mentioned in Sec. 15 of the Letters Patent, and the question, in our judgment must be answered in the words used by Couch, C. J. in (c), "the judgment in cl. 15 means a decision which affects the merits of the question between the parties by determining some right or liability." A "Judgment" in a Land Acquisition case is now under the Code of Civil Procedure and appealable as such and we do not see any reason to give a limited meaning of the word as used in the Letters Patent. The view taken by the Lahore High Court in (d), was that the L. A. Amendment Act, (XIX of 1921) did not in any way affect the right of appeal from the judgment of one Judge to a Division Bench under the Letters Patent; the scope of the amendment was to extend the right of appeal and not to curtail any existing right,....by the express provisions contained in the Amending Act of 1921 a judgment includes a judgment in a Land Acquisition case. The appeals preferred by the Collector of Dacca in the case before us are competent."

Execution of Awards :—The awards of L. A. courts are by the amendment made by sec. 26 (2) placed in the same footing as the decrees of the Civil Courts and they are capable of execution in the same manner as decrees of the Civil Court subject to the condition laid down in sec. 82 of the Civil Procedure Code namely (1) where the decree is against the Secretary of State for India-in-Council (now the Union of India, and the corresponding provinces for corresponding Indian States; vide Art. 300 of the Constitution of India) or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified the court shall report the same for the orders of the local Government, (2) execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

Award under different Acts and Court Fees payable

Awards of Calcutta Improvement Tribunal :—Sec. 82 C. P. C. has no application to an award made by the Calcutta Improvement Tribunal. Such an award, even if it be a decree is not a decree in a suit against the crown or a public officer or anybody at all. Such an award is not a decree. Sub-sec. 2 of sec. 26 of the L. A. Act, introduced by the amending Act of 1921 is not a part of the C. I. Act of 1911. For the purposes of the execution of an award of the Calcutta Improvement Tribunal by the Calcutta Small Causes Court, the Tribunal need not, can not, and cannot be required to send the the award to the Small Causes Court, together with a certificate of non-satisfaction. O. 21 r. 6 C. P. C. has no application to such an award. Under sec. 77 (2) of the C. I. Act it is to be executed by the S. C. Court as if it were a decree passed by itself. The latter court is not a transferee

(b) *The Collector of Dacca v. Golam Ajam Chowdhury*, 40 C. W. N. 1143 : A.I.R. 1936 Cal. 688.

(c) *The Justice of the Peace for Calcutta v. The Oriental Gas Co.* 8 B. L. R. 433.

(d) *Har Dial Shaha v. The Secretary of State*, I. L. R. 3 L. 420.

Court, (e). Under sections 70 and 71 the Tribunal is deemed to be a Court and its award has got the force of a decree of S. C. Court. So under section 77A an appeal to High Court will require *ad valorem* court fee.

Under the Land Acquisition Act. s. 26 :—It is well settled that an order under the Land Acquisition Act, I of 1894, is deemed to be a decree and an appeal against that decree is therefore an appeal from a decree and *ad valorem* Court fee under Sch. I, Art. I of the Court Fees Act read with s. 8 of the Suits Valuation Act is payable, (f), (see notes above).

Under the Defence of India Act s. 19 :—There is difference of opinion between the different High Courts. Punjab High Court (Wadia J.) held that "there is no provision in the Defence of India Act and the rules made thereunder by which the award of an arbitrator can be deemed to be an award of the Court under the Land Acquisition Act, (g). This has been followed by Division Bench of same High Court, (h), and by Nagpore High Court (i), and also by Delhi High Court, (j). The effect is that fixed court fee under Sch. II, Art. 11 of C. F. Act is applicable. But Calcutta High Court held that an award has got the force of a decree, so *ad valorem* Court fee is payable on the difference of claim and the award made, under Sch. I of Art. I of C. F. Act, (k).

Andhra Pradesh High Court followed Calcutta High Court, (l).

Under the U. P. Town Improvement Act :—Sections 56 to 58 provide that the award of the Tribunals has got the force of a decree, (m).

Under the Requisitioning and Acquisition of Immovable Property Act, 1952 :—The views expressed under the Defence of India Act, are applicable. See *Satya Charan's Case* (k) above and *Srurungiri's Case*, (l).

Under the Re-Settlement of Displaced Persons (Land Acquisition) Act 1948 (s. 7) :—Delhi High Court has held that an award of compensation is neither a decree nor an order having the force of a decree, hence an appeal against it under s. 7 (3) of the Act attracts fixed court fee under sch. II, Art. II of the Court Fees Act and payment of court fees on *ad valorem* basis can not be insisted upon (n), dissenting from Calcutta view.

Costs

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(e) *Asmaboo Kurban Hossain v. Province of Bengal*, 46 C. W. N. 927.

(f) *Daryodh Singh v. Union of India*, 1966-68, Punj. L. R. 299 (D.B.).

(g) *Hirji Virji Jangbari v. Government of Bombay*, A. I. R. 1945 Bom. 348.

(h) *Kimwar Jagat Bahadur Singh v. State of Punjab*, A. I. R. 1957 Punjab 32.

(i) *Crown v. Chandrabhanlal*, A. I. R. 1957 Nag. 8.

(j) *Mongal Sen v. Union of India*, A. I. R. 1970 Delhi 44 (D.B.).

(k) *Sohanlal Bahety v. Province of Bengal*, A. I. R. 1946 Cal. 524 : 50 C. W. N. 820. followed in *Satya Charan Sur v. State of West Bengal*, A. I. R. 1959 Cal. 603.

(l) *Srurungiri Lakshminarayana Rao v. Rev. Div. Officer, Kakinada*, A. I. R. 1968, Andh. Pra. 348.

(m) I. L. R. 1939 All. 142 : A. I. R. 1939 All. 127.

(n) *Mangal Sen v. Union of India*, A. I. R. 1970 Delhi 44 (D. B.).

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

State Amendments

Maharashtra.—By *Bombay Act XXXV of 1953, sec. 9* :—In section 27 of the said Act, in sub-section (2), after the words “award of the Collector” the words “or the amendment thereof” shall be inserted.

Calcutta (Improvement).—By *Calcutta Improvement Act V of 1911. Amended by West Bengal Act No. 35 of 1955 Sec. 9.*

Howrah.—By *Howrah Improvement Act No. XIV of 1956 S. 27.* [See under Part III, Chapter XV, West Bengal (3)].

Gujarat.—Same as that of Maharashtra.

Mysore.—By *the Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961.*

[See under Part III, Chapter X].

Notes

Sec. 32 of the old Act X of 1870 provided that “the costs of all proceedings taken under this Part by order of the Court shall in the first instance, be paid by the Collector.” sec. 33 of the old Act provided that “Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested. Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector,” and sec. 34 (ii) provided that “It (i. e., the award made by the Court) shall also state the amount of costs incurred in the proceedings under this Part and by what persons and in what proportions they are to be paid.”

In Statement of Objects and Reasons to the Bill No. 6 of 1892 introduced in the India Council to amend Act X of 1870 it was stated :—“On the other hand provisions of the Act as to the incidents of costs, the whole of which fall on the Collector if the final award is ever so little in excess of his tender, are such as to encourage extravagant and speculative claims. The chance of altogether escaping the payment of costs is so great, that claimants are in the position of risking very little to gain very much, and have, therefore every motive to refuse even liberal offers made by the Collector, and to try their luck by compelling the reference to the Court.” To avoid the evils stated above, the present section has been enacted in place of Secs. 32, 33 or 34 of the Act X of 1870.

Court's power to award costs :—The Select Committee by its Report dated 2-2-1893 observed : "We are of opinion that when the Judge finds the Collector's award to have been inadequate, the Collector should ordinarily pay the costs of the reference, but we have inserted the clause giving discretion to the Court to give the Collector part of his costs whenever the claim of the objector proves to be extravagant," and again by their Report dated 23-2-1893 : "In section 27 we have widened the discretion of the Judge in the apportionment of costs, to meet an objection pressed by the Lieutenant-Governor of Bengal. It is represented that owners of land frequently suppress the evidence as to the value of their property which it was their duty to adduce before Collector, hoping to deploy it to greater advantage before the Judge. We have now given express power to the Judge to give effect to this consideration in his award of costs when he is of opinion that evidences given before him has been wilfully kept back in the proceedings before the Collector." As to the costs of proceedings when the compensation is assessed by a sheriff's jury, sec. 51 of the Lands Clauses Act, 1845, provides that if the amount given by the verdict of the jury is for a larger sum than the sum which has been previously offered by the promoters namely, the sealed offer, the claimant will be entitled to the whole of the taxed costs of the proceedings

Award of costs discretionary :—A successful party is entitled to his costs. But the Court has a discretion to award or not to award the costs and such discretion is to be exercised on well-recognised principles. If it fails to exercise its discretion on those principles its order can be varied by an appellate court. In making an order for costs under section 27 (1) of the L. A. Act, 1894, the Court may have regard to the provisions of sec. 35 of the C. P. C. 1908. On a reference to the Court, under section 18 of the L. A. Act the judge confirmed the award made by the L. A. Officer and dismissed all claims of the claimants but did not give costs to the Government on the amount of claims disallowed on the ground that the exaggeration was due to "the uncertainty of market created by the boom and its aftermath." On appeal by Government on the question of costs it was held, reversing the order of costs, that the Government were entitled to their costs as the judge had shown no adequate reason for departing from the ordinary rule that costs follow the event, and had, therefore, exercised his discretion in violation of well-recognised principles of law, (a). A claimant for compensation in a land acquisition matter is in the position of a plaintiff who has instituted a suit to recover a sum of money and when it is found that he is not entitled to success under the provisions of the law relating to the subject, there is no ground upon which the tribunal hearing the claim could deprive the opposite party, the Secretary of State of the costs to which he would be entitled under the ordinary provisions of law. There is no justification for refusing such costs on sentimental grounds, (b).

(a) *The Assistant Collector, Salsette v. Damodardas Tribhubandas Bhanji*, 53 Bom. 178 : 30 Bom. L. R. 1622 : 114 I. C. 397 : 1929 A. I. R. (B) 63.

(b) *Debidin v. Secretary of State*, 1942 A. L. J. 141 : 1942 A. W. R. 79 : 1942 A. L. W. 148 : 1942 O. W. N. 131 : 1942 A. I. R. (All) 186.

In (c), the Government having backed out of the acquisition the court closed the proceedings and refused to make an order for costs on the ground that sec. 27 had no application as the acquisition itself had been declared by the government invalid. It was held that once a proper reference comes before the Court as is the one in this case, the court should have made a direction as to costs.

Section 27 (2) of the L. A. Act is limited to the proceedings in the court of first instance, and does not apply to proceedings in higher Courts. Costs of such proceedings are in the discretion of those Courts, (d).

Assessment of costs :—Rule 36 (b) of Chapter VI of the Rules and Circular Orders of the Calcutta High Court provides that “cases under Part III of the Land Acquisition Act shall be deemed to be suits and the fees allowable therein may be calculated either on the amount of compensation decreed in excess of the sum tendered by the Collector or on any smaller amount which the Court in its discretion may think proper.” Rule 37 (b) then provides that “if a suit be dismissed for default, the amount of the fee to be paid to defendant’s pleader shall be left to the discretion of the Court, provided that such fee shall not exceed the moiety of the fee calculated on the whole value of the suit under Rule 35.” In (e), the claimant applied for leave to withdraw the case ; he was allowed to do so by the District Judge, but was directed to pay full costs to the Government under Rule 37(a). The High Court in revision held that “full costs can be allowed only if a suit has been dismissed on the merits. It is obvious, therefore, that in no event should an order for costs have been made in excess of half the full fees of the suit.”

Pleader’s fees :—Section 27 does not authorise the Court to allow any amount for pleader’s fees at its discretion. Where the subject matter is capable of being valued, pleader’s fees must be allowed on the scale laid down in Civil Rules of Practice or on such other scale as may be in force for the particular Court, (f). According to the Allahabad High Court, proceedings in the Court of the District Judge under the L. A. Act are not suits for money or suits for land within the meaning of Rule 457 of the Rules of the 4th April, 1894, for the Courts subordinate to the High Court for the North Western Provinces. A pleader’s fee in such proceedings should be calculated according to rule 461 of the Rules, (g). Pleader’s costs can be allowed to each side on the difference between the amount claimed and the amount awarded, (h). In such cases the pleader’s fee in the Court below can be awarded at five per cent on the difference between the award of the Collector and that of the judge, (i).

(c) *Muthuveerappa Pillai v. Revenue Divisional Officer, Melur*, 59 M. L. J. 682 : 129 I. C. 681 : 1931 A. I. R. (M) 26.

(d) *Asst. Collector, South Salsette v. Shapurji Cawasji*, 33 Bom. L. R. 1210 : 136 I. C. 173.

(e) *Nanhilal Agrari v. Secretary of State*, 11 C. L. J. 217.

(f) *Ekambara Gramany v. Muniswami Gramany*, 31 M. 328.

(g) *Kanhaiya Lal v. Secretary of State*, 14 I. C. 214.

(h) *Ramzur Singh v. Secretary of State*, 174 P. W. R. 1913 : 309 P. L. R. 1913 : 21 I. C. 270.

(i) *Ram Saran Das v. Collector of Lahore*, 9 P. W. R. 1911 : 9 I. C. 228.

It is the business of the applicant in a L. A. case to put forward before the L. A. Officer every circumstance which might affect the amount of compensation which he demands and if he fails to do so, the civil court is justified in ignoring it. For the purpose of taxation of pleader's fees proceedings taken on reference under section 18 of the L. A. Act should not be treated as a suit within the meaning of the Rules contained in para 272 of the Oudh Civil Digest. Pleader's fees in such cases should be assessed under Rule 9 of the latter paragraph, (j). The Calcutta High Court has framed the following Rules for regulating pleader's fees in L. A. cases. "In this and in the following Rules cases under Part III of the L. A. Act I of 1894 shall be deemed to be suits and the fees allowable therein may be calculated either on the amount of compensation decreed in excess of the sum tendered by the Collector or on any smaller amount which the Court in its discretion may think proper. In the event of the sum tendered by the Collector being decreed pleader's fees may be awarded to Government on the difference between that sum and the sum claimed, or on any smaller amount which the court in its discretion may think proper: Provided that, in any case in which the remuneration under the above Rules, shall in the opinion of the Judge, prove to be insufficient, or in any case not provided for, he shall be at liberty to allow pleader's fees as in miscellaneous cases under Rule 26." *High Court Circular Order*, 1918, Ch. VI, Rule 20 (b), (c), (d).

Costs in cases of extravagant claims :—Where the Court in awarding excess compensation, fails to award even one-quarter of the excess claimed, the claim may well be deemed to be an extravagant claim, which would justify the Court in ordering the claimant to pay Government's costs in resisting the claim, (k). When the claim of an objector to a land acquisition award is found to be exorbitant, speculative and absurdly extravagant, the counsel's fees for the secretary of state should be allowed ad valorem on the amount of appeal, (k-1). The language of s. 27 (1) is perfectly clear and very wide, and must on the face of it give power to the Court to order costs to be paid by a person whether he be an actual party or not. A person who is present before the Court as trustee of a devasthanum, though he has not personal interest in putting forward claim, may be made liable for costs. S. 27 (1) in no way conflicts with or limits or restricts the provisions of s. 35, C. P. C. Reading s. 27 (1) of the L. A. Act, with s. 35, C. P. C. it must be held that the Court has jurisdiction in a suitable case to direct the cost to be paid by the trustee of devasthanum personally although he merely represents the devasthanum in the proceedings, when he makes a most extravagant claim and acts recklessly and where it would be unjust to call upon the real party (devasthanum) to meet the burden of costs, (l).

(j) *Nawab Sajjad Ali Khan v. Secretary of State for India*, 25 I. C. 732.

(k) *Revenue Divisional Officer, Trichinopoly v. Srinivasa Ranga Iyengar*, 1937 M. W. N. 1906. *Sevuganchettiar v. Revenue Divisional Officer, Devakottai* (1940) 2 M. L. J. 753 : A. I. R. (1941) Mad. 198.

(k-1) *Faiz Mahammad v. Secy. of State* 17 I. C. 901.

(l) *Sevugan Chettiar v. Revenue Divisional Officer, Devakottai*, 52 L. W. 660 ; 1940 M. W. N. 1139 : (1940) 2 M. L. J. 753 ; 1941 A. I. R. (M) 198.

Order of costs appealable :—An award of costs is a part of the award and is appealable as such under section 54 of the Act, (*m*), though under section 35 of Act X of 1870 it was held in (*n*), that an appeal does not lie, under this Act, on the question of the amount of costs, which the Judge is to determine in the same way as is done in suit by the taxing officer. In (*o*), it has been held that the order of costs is appealable.

Award of costs under Sec. 27 (2) being discretionary, it will not be interfered with in appeal unless it is shown that the discretion is arbitrarily exercised, (*p*). Costs can be given only to the proper parties on record, the particular body or concern for whose needs lands are being acquired is not a necessary party and costs cannot be allowed in favour of such body or concern, (*q*).

Collector may be directed to pay interest on excess compensation

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

State Amendments

Maharashtra.—By Bombay Act XVIII of 1938 :—for the word “six” the word “four” shall be substituted.

Gujarat.—same as that of Maharashtra.

Madras.—By Madras Act XII of 1953 :—(i) for the word “six” the word “four” shall be substituted. (ii) the following proviso shall be added at the end, viz.—

“Provided that where such possession is taken before the commencement of the Land Acquisition (Madras Amendment) Act, 1953, the foregoing provision shall have effect as if the rate of four per centum per annum specified therein, the rate of six per centum per annum had been substituted.”

Madhya Pradesh.—By C. P. & Berar Act XXVII of 1939 :—

“for the words “at the rate of six per centum per annum” the words “at the rate which shall not be less than three per centum per annum and more than six per centum per annum” shall be deemed to be substituted.”

(*m*) *Ekambara Gramany v. Muniswami Gramany*, 31 M. 328 ;

(*n*) *Sreemutty Bamasoondaree Dabee v. Verner, Collector, under Act X of 1870 for the Town of Calcutta*, 22 W. R. 136 : 13 B. L. R. 189.

(*o*) *Muthuveerappa Pillai v. Revenue Divisional Officer, Melur*, 59 M. L. J. 682 : 129 I. C. 681 : 1931 A. I. R. (M) 26.

(*p*) *Collector v. Principal, Mayo College*, A. I. R. 1955 N. U. C. 4805 (Ajmir).

(*q*) *Kanti Bhusan Sarcar v. Province of W. B.*, A. I. R. 1955 N. U. C. 2340 (Calcutta).

Punjab.—By Punjab Act II of 1954 :—

for the word “six” the word “four” shall be substituted.

Mysore.—By the Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961.

[See under Part III, Chapter X].

Notes

This section is new and has been introduced in Act I of 1894. There was no corresponding section in Act X of 1870.

Payment of interest is discretionary :—A claimant is entitled to interest on compensation money from the date on which the property acquired is taken possession of by the Collector, (r). Though the claimant is entitled as a matter of right to interest at 6 per cent per annum on difference between the amount awarded and that offered by the Collector as has been held in (s) still it is entirely in the discretion of the court to award interest on the excess amount which the Collector ought to have awarded from the date of taking possession of the land by the Collector to the date of the payment of such excess amount in court. Though it is in the discretion of the court to award interest the discretion must be exercised judiciously and not arbitrarily. Interest at 6 per cent should be allowed from the date of the Collector's taking possession on the difference between the Collector's award and the price finally assessed unless there is a special reason to the contrary, (t). Under sec. 28 it is within the discretion of a court to decree interest where a larger amount of compensation has been given than was awarded by the Collector, (u).

In, (v), it has been held that under Sn. 28 it is only the Dy. Commissioner (Land Acquisition Officer) that can be directed to pay interest on the excess amount awarded by the Court and that the appellant cannot sustain his claim for interest against any other competing claimant. In (w), it has been held that unless there are special reasons to the contrary, interest ordinarily should be granted to the claimant specially when there is a big difference between the award given by the Collector and the amount eventually determined by the court. The principle laid down by The Supreme Court in *T. N. K. Govindaraju Chetty v. Commissioner, I. T. Madras*, (w-1) is followed.

In (x), their Lordships state—: “A small matter of the judgment was the omission of the right to interest which the appellant is entitled at the rate of 6 per cent.” In no case is the question whether the court is bound to

(r) *Kirpa Ram Brij Lal v. Secretary of State*, 106 I. C. 90.

(s) *Rangasami Chetty v. Collector of Coimbatore*, 7 M. L. T. 78 : 5 I. C. 744.

(t) *Ram Saran Das v. Collector of Lahore*, 9 P. W. R. 1911 : 9 I. C. 228 : *Ram Prosad v. Collector of Aligarh*, 40 I. C. 274.

(u) *Khushal Singh v. Secy. of State*, 52 All. 658 : 133 I. C. 611 : 1931 A. I. R. (All.) 394.

(v) *G. Gurudasappa v. S. L. A. Officer*, A. I. R. 1959 (Mys.) 93.

(w) *Collector of Darrang v. Phani Bhusan*, A. I. R. 1958 Ass. 124.

(w-1) *T. N. K. Govindaraju Chetty v. Commissioner, I. T. Madras*, A. I. R. 1968 S. C. 129.

(x) *Lala Narsingdas v. Secretary of State*, 52 I. A. 133 : 6 Lah. 69 : 29 C. W. N. 822 : 23 A. L. J. 113 : 48 M. L. J. 386 : (1925) A. I. R. (P. C.) 91,

award interest under section 28 discussed and that point is not altogether free from doubt. If it appears that the claimants did not put forward any extravagant claim but claims which were allowed to a considerable extent they were entitled to interest at 6 per cent without expressing any opinion as to whether section 28 is mandatory or not, (y). Where the District Judge enhances the amount of compensation as awarded by the Collector the claimant is entitled to interest on the amount whereby the District Judge enhanced the Collector's award, from the date of that award until the date of his own judgment, and if the amount is further enhanced by the High Court, from that date, until the date of judgment of the High Court, (z).

Whether interest ought to be allowed to Government :—In (a), the question for determination was whether interest ought to be allowed to Government on the moneys which having been deposited by them in the District Court, were withdrawn by the claimant under the award in his favour made by that court under the L. A. Act but reversed in appeal by the High Court. The learned District Judge held that Government were not entitled to interest on the ground that the award of interest is in the discretion of the Court, and that having regard to the decision of the High Court which, in reversing the award of the District Court, directed each party in the acquisition proceedings to bear his own costs, it must be presumed that the High Court did not intend the sum wrongly withdrawn by the claimant to carry interest with it. The Court held : "Undoubtedly the award of interest is generally speaking a matter of the Court's discretion except where by the law it is made obligatory. And the question is whether in the circumstances of the present case it is reasonable to award interest. It is a rule of law that, where a party has wrongfully taken from Court moneys deposited in Court by his opponent, that Court has inherent power to enforce refund of the amount with interest, (b). In the present case the amount which was deposited in Court by the Government was taken away by the respondent because the amount had been settled by that Court to be the amount of compensation to which the respondent was entitled under the L. A. Act. The High Court in appeal reduced the amount to which the respondent was entitled. Under these circumstances the respondent must be held to have had the benefit of the money belonging to Government in excess of that to which the High Court held him entitled. That benefit is represented, not only by the excess amount wrongly taken by the respondent from the District Court but also by the amount of interest which it carried with it."

Whether interest is payable on compensation for acquisition under the Defence of India Act :—In (c), it has been held that the claimant was not

(y) *Subramania Aiyar v. The Collector of Tanjore*, 51 M. L. J. 309 : 97 I. C. 933.

(z) *Narsingdas v. Secretary of State*, 112 I. C. 797 : 1928 A. I. R. (L) 263.

(a) *The Collector of Ahmedabad v. Lavji Mulji*, 35 Bom. 255 : 13 Bom. L. R. 259 : 10 I. C. 818.

(b) *Mookoond Lal Pal v. Mahomed Samimeah*, 14 Cal. 484 ; *Govind Vaman v. Sakharam Ramchandra*, 3 Bom. 42.

(c) *Associated Oil Mills Ltd., Katpadi v. The Provincial Government of Madras*, 60 L. W. 715 : 1947 M. W. N. 669 : (1947) 2 M. L. J. 429.

entitled to any interest as there was no agreement by the Government to pay any interest and there is no provision for the award of interest under section 23 of the L. A. Act which is the only section made applicable to requisition by the Government under section 19 (1) (e) (i) of the Defence of India Act 1939.

But the Calcutta High Court recently in (d). held "that in land acquisition proceedings under Sec. 19 (1) (f) of D. I. Act and Rules, interest should be made payable on the entire amount, awarded by the arbitrator as compensation for the property acquired from the date of the Collector's taking of possession of the same and the date of withdrawal, if any, of any part of the said compensation, by the referring claimant and further interest at the same rate should be directed on the balance of the final award by the arbitrator until payment or deposit of the same by the Government. An application under Art. 227 of the Constitution is maintainable even where an appeal lies from the award of the arbitrator under sec. 19 (1) (f) of the Defence of India Act and the Rules framed thereunder. The contention that no interest should have been awarded at all in the instant cases on the authority of the decision of the Supreme Court reported in (e), is not acceptable in as much as, even upon that decision in the light of earlier decision of the Supreme Court in (f), interest would clearly be payable in the instant cases."

Interest payable on statutory allowance :—The only provisions which the Act makes for payment are those contained in sections 40 and 42, Act X of 1870 [corresponding to sections 31, 23 (2) and 28 of Act I of 1894], the former of which imposes a statutory liability upon the Collector to pay the compensation according to the award to the person named therein, and the latter imposes upon him the further statutory liability when the amount is not paid on taking possession, of paying the amount awarded and the added percentage with interest on such amount and percentage at the rate of 6 per cent per annum, (g).

The Rate of Interest :—The rate of interest has been reduced from 6 to 4 per cent in Bombay Act sec. 2 of the Land Acquisition (Bombay Amendment) Act XVIII of 1938 in the following words "In word "six" the word "Four" shall be substituted." In the Objects and Reason of the said Act it is stated "under section 34 of the Land Acquisition Act 1894 if compensation is not paid or deposited at or before the time when possession is taken of the land, the Collector has to pay interest at 6 per cent per annum on the amount awarded as compensation with effect from the date of taking possession. Similarly under section 28, if the Court enhances the amount of

(d) *Roufannessa Bibi v. Union of India*, 66 C. W. N. 412.

(e) *Mahabir Prosad Rungta v. Durga Dutta*, A. I. R. 1961 S. C. 990.

(f) *Satinder Singh v. Umrao Singh*, A. I. R. 1961 S. C. 908. *Bolai Lal Pal v. State of West Bengal*, 70 C. W. N. 363 ; *Province of Bengal v. Prawn Kissen Law*, 54 C. W. N. 801 ; A. I. R. 1950 Cal. 498. *K. A. Swamy v. Special Tehsildar*, A. I. R. 1970 Andh. Pra. 139.

(g) *Nilkanta Gonesh Naik v. Collector of Thana*, 22 Bom. 803 (805) (F.B.).

For how far Interest Act, 32 of 1839 is applicable, see *Thawardas Pherumal v. Union of India*, A. J. R. 1955 S. C. 468 ; 1955 S. C. A. 862.

compensation, the Court may direct payment of interest on the excess of amount awarded as compensation with effect from the date of taking possession. The high rate of 6 per cent interest is now out of keeping with the rate of interest in this province, and imposes an unnecessary burden on public enterprise. The Bill, therefore, seeks to reduce the rate to 4 per cent *per annum*."

Where there is no evidence of any building activity of substantial nature being carried on in the neighbourhood at the time of notification, no question of potentiality of the land as building site can possibly arise.

Where it is not shown that the offer of price is not genuine or irresponsible, it can be taken into account in ascertaining the value of the property acquired. High Court can interfere in matter of valuation. Question of adequacy of interest under sec. 28 of Land Acquisition Act can be raised in High Court but the Court has no discretion to allow a lesser rate than that mentioned in the section.

(By amendments in the States, Madras, Gujarat, Maharashtra and Punjab, Courts have to award interest at the rate of 4 per cent *per annum*. In Uttar Pradesh there being no amendment interest is awarded at the rate of 6 per cent *per annum*), (h).

(h) *Raghubans Narain Singh v. Uttar Pradesh Government*, 1967 (II) S. C. J. 214.

PART IV

APPORTIONMENT OF COMPENSATION

Particulars of apportionment to be specified.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Notes

This was section 37 of the old Act X of 1870 which ran as follows :
“Where there are several persons interested if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.”

Proceedings for apportionment.—The reference before the court for apportionment partakes the character of the suit ; and on a question of apportionment which rests on the validity or otherwise of a transfer which the existing shebait has made the presumptive shebait is all proper parties, (a).

What is apportionment :—Part III of the L. A. Act deals with references to the *amount* of compensation and Part IV deals with the *apportionment* of the compensation in cases where there are several ‘persons interested’, that is, as defined by section 3, persons claiming an interest in the compensation ; and by section 38 (now sec. 30) where the amount of the compensation has been settled under section 14 (now sec. 11) if there is any dispute as to the apportionment of the compensation, the Collector shall refer it to the decision of the Court. A dispute arose between rival claimants as to the entire amount of the compensation given on account of the acquisition of certain land. Each claimant asserted an exclusive right to the whole and it was contended that there was therefore no question of apportionment. Sargent C. J. in delivering the judgment held : “We should give the term ‘apportionment’ in Part IV a liberal construction as including the case where the court has to decide between rival claimants of the entire compensation. It is to be further remarked that all such disputes may end in an apportionment of the compensation.” (b).

Agreement as to apportionment :—Under section 11 of the L. A. Act, it is the duty of the Collector to make an award in regard to three matters, viz.,

(a) *Nanda Lal Mullick v. Kumar Arun Chandra Singha*, 41 C. W. N. 464.

(b) *Kashim v. Aminbi*, 16 Bom. 525.

(1) the area of the land included in the award, (2) the total compensation to be allowed for the land and (3) the apportionment of that compensation among all the persons interested in the land, (c). Where no objection is taken under section 18. by a person interested against the apportionment of the compensation money the Collector's award is conclusive as against him under section 29 of the Act, (d). The ordinary rule in a proceeding under the L. A. Act is that a party who has made no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect and such person, upon a reference made by some other party who considers himself aggrieved by the award of the Collector, is not entitled to have it varied for his own benefit, (e). In a proceeding under the L. A. Act, a party who has raised no objection to the apportionment of the compensation made by the Collector must be taken to have accepted the award in that respect, (f).

An agreement as to apportionment of compensation in case of acquisition is sometimes found in a lease. Such a covenant is valid in law and enforceable, (g).

Agreement as to apportionment is conclusive :—According to the ordinary principles of agreement when an offer is made and accepted it becomes a contract and binding on the parties. In case in which a claimant accepts the award that is the tender of the Collector, he cannot be permitted to object to the same and claim a reference thereof to the civil court. Similarly, a person who has taken payment *without protest* must be deemed to have waived his objections to the award, if any, and cannot claim a reference thereafter, (h).

Effect of agreement as to apportionment :—In (i), the landlord disputed the apportionment made in favour of the tenants and apportionment cases were instituted with the result that the tenants came to a settlement with the landlord accepting definite amounts of the compensation money. It was held that the tenants had no further interest and that the landlord, if the enhancement stands, is entitled to receive the compensation money in accordance with the decision of the special Land Acquisition Judge. "Where in a proceeding under the L. A. Act the tenants accepted the Collector's valuation but the landlord objected to it and asked for a reference and the judge allowed an excess amount representing all the interests in the land, it was held that the tenants were not entitled to any portion of the excess amount allowed by the judge," (j). Where there are two claimants and one of them agrees to accept a certain valuation and his share at a certain ratio

(c) *Prag Narain, v. Collector of Agra*, 59 I.A. 155 : 54 All. 286 : 36 C.W.N. 579 : 55 C. L. J. 318 : 34 Bom. L. R. 885 : 136 I. C. 449 : 1932 A. I. R. (P. C.) 102.

(d) *L. A. Officer, Karachi v. Lakhmibai*, 11 I. C. 304.

(e) *Bejoy Chand Mahatap v. P. K. Mzaumdar*, 13 C. L. J. 159.

(f) *Abu Bakar v. Peary Mohan Mukherjee*, 34 Cal. 451.

(g) *Gadadhar Bhatta v. Lalit Kumar Chatterjee*, 10 C. L. J. 476.

(h) *Abu Bakar v. Peary Mohan Mukherjee*, 34 Cal. 451.

(i) *Secretary of State v. Naresh Chandra Bose*, 44 C. L. J. 1 : 95 I. C. 457 : 1926 A. I. R. (C) 1000.

(j) *Secretary of State v. Manohar Mukherjee*, 23 C. W. N. 720.

in relation to the other claimant, and an award is made in respect of both claimants on such basis the second claimant if he causes a reference to be made as to the amount alone but not as to the apportionment, cannot, on the amount being increased, claim the whole thereof minus the sum which the first claimant had accepted by agreement on the basis of the lower valuation. He is only entitled to his share according to the ratio of apportionment by which he is bound and the gain is a gain of the authority which acquired the land, (k).

Dispute as to apportionment

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

State Amendments

Mysore.—By the Land Acquisition (Mysore Extension and Amendment) Act No. 17 of 1961.

[See under Part III, Chapter X].

Notes

This was section 38 of Old Act X of 1870 which ran as follows :—

“When the amount of compensation has been settled under section 14, if any dispute arises as to apportionment of the same or any part thereof the Collector shall refer such dispute to the decision of the Court.”

Inconsistency in the Act :—Section 11 enacts that the Collector shall proceed to enquire *inter alia* into “the respective interests of the persons claiming the compensation” and that he shall make an award dealing also with the question of the apportionment of the amount awarded. The Legislature seems to have overlooked that the word used in section 11 is “shall” and assumes in section 30 that the Collector has the option either to decide that question himself or to refer it to the decision of the Court, (l).

Classes of reference :—It has been seen (vide section 18 and notes thereunder) that the L. A. Act provides for two classes of reference to the judge, one to *assess* compensation and the other to *apportion* the compensation, (m). The L. A. Act contemplates two perfectly separate and distinct forms of procedure, one for fixing the amount of compensation described as being an

(k) *Prag Narain v. The Collector of Agra*, 59 I. A. 155 : 54 All. 286 : 36 C. W. N. 579 : 55 C. L. J. 318 : 34 Bom. L. R. 885 : 1932 A. L. J. 741 : 136 I. C. 445 : 1932 A. I. R. (P. C.) 102.

(f) *Venkata Reddi v. Adhinarayana*, 52 M. 142 : (1929) A. I. R. (M) 351.

(m) *Taylor v. Collector of Purnea*, 14 Cal. 423.

award (an appeal from that award or from any part of that award is given to the High Court under section 54 of that Act) ; and the other, for determining in case of dispute the relative rights of the persons entitled to the compensation money. When once the amount as to the award has become final, all questions as to fixing of compensation are then at an end ; the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the court and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be, (n). The value of the land acquired under the Land Acquisition Act should ordinarily be determined as a whole, and the question of apportionment of the compensation awarded amongst claimants of different degrees should thereafter be taken into consideration, (o).

It has been pointed out in the judicial decisions, *e. g.*, in (p), that the value of the land should ordinarily be determined as a whole and the question of apportionment of the compensation awarded amongst claimants of different degrees should thereafter be taken into consideration. This view, however, has not always been accepted in practice. The procedure that had been adopted in the case of, (q), has been followed as a matter of convenience, namely that the market-value of the interest claimed by persons who held interests of different degrees in the property acquired has been determined successively and independently of each other. It will be seen that any one who objects to the Collector's award has an absolute right under section 18 to have the matter referred to the court and that what the section intends to do merely is to enable the Collector himself in certain difficult cases to refer the question to the court of *his own motion*, but nothing will prevent any of the parties who chooses to go to the court from doing so. This section allows the Collector to decide, if he can, whilst it gives him an opportunity, of shifting the decision to the Court, and also leaves the parties themselves free to go into Court if they are dissatisfied with the Collector's apportionment.—*Proceedings in Council*. The Select Committee in para 9 of their Preliminary Report dated 1-2-1893 observed : "In the section which constituted Part IV of the Act (Apportionment of Compensation) we have inserted words which bring under the orders of the court issue as to the persons entitled to the compensation money as well as that of the share which each is entitled to receive."

Scope and object of section 30 :—It should be noted that only distinction between a reference under section 18 of the L. A. Act and one made under section 30 thereof, is, that the *reference under the latter section is made solely on the question of title, by the acquisition officer of his own motion, while the reference under section 18 is made on the application of person interested in*

(n) *Ramachandra Rao v. Ramachandra Rao*, 35 C. L. J. 545 ; 26 C. W. N. 713 (P. C.).

(o) *Sadhu Charan v. Secretary of State*, 31 C. L. J. 63.

(p) *Collector of Belgaum v. Bhimroo*, 10 Bom. L. R. 657 ; *Bombay Improvement Trust v. Jalbhoy*, 33 B. 483 ; 11 Bom. L. R. 674 ; *Government of Bombay v. Esufali*, 34 B. 618 ; 12 Bom. L. R. 34 ; *Dunialal v. Gopinath*, 22 C. 820.

(q) *Girish Chandra Ray Choudhury v. Secretary of State*, 24 C. W. N. 184 : 31 C. L. J. 63 ; 55 I. C. 155.

the compensation money and not by the acquiring officer of his own motion, (r). Section 18 deals *inter alia* with objections as to persons to whom the compensation is payable. Section 30 deals with disputes as to the persons to whom compensation is payable, (s). When under section 30 of the L. A. Act 1894 the Collector has referred to the District Judge a dispute as to the apportionment of compensation settled under section 11 of the Act, it is not *ultra vires* of the District Judge to add a party to the proceedings before him having regard to section 53 and section 32 of the (old) Code of Civil Procedure, (t).

In a reference under sec. 30 for apportionment of compensation amount among the claimants, the court has no jurisdiction to go behind the award and redetermine the quantum of compensation, (u).

In a reference under section 18 of the L. A. Act it is not open to the Special Judge to go into question raised by the parties who did not object to the award and apply for a reference, (v). The ordinary rule in a proceeding under the Land Acquisition Act is that a party who had raised no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect and such person upon a reference made by some other party, who considers himself aggrieved by the award of the Collector is not entitled to have it varied for his own benefit. In other words, the Civil Court is restricted to an examination of the question which has been referred by the Collector for decision, and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained any order of reference. But the rule is inapplicable to a case where the scope and object of reference by the aggrieved party was not to settle the question of apportionment as between himself and the other party who had raised no objection but merely to obtain a final benefit for both (w).

A question under this section is one of apportionment and apportionment only, and the question whether a tenant a part of whose tenure has been acquired, should have his rent abated does not fall within this section, (x). It is an well established principle that unless an objection is specifically taken with regard to a matter stated in the award of the Collector, such question cannot be urged at the time of the hearing of the case before the Court, (y). Where in respect of a dispute as to the apportionment of compensation between a proprietor and three mukarraridars, a reference is made by the Collector under section 18 of the L. A. Act on applications made by the proprietor and one of the mukarraridars, the Court having seisin of the reference has power to investigate the claims of the other mukarraridars

(r) *Hazura Singh v. Sunder Singh*, 97 P. R. 1919 : 53 I. C. 589.

(s) *Gobinda Ranee v. Brinda Ranee*, 35 C. 1104.

(t) *Kishan Chand v. Jagannath Prasad*, 25 A. 133.

(u) *Kothamasu Kanakarathamma v. State of Andhra Pradesh*, A. I. R. 1965 S. C. 304.

(v) *Gobinda Kumari Roy Choudhury v. Debendra Kumar Roy Choudhury*, 12 C. W. N. 98.

(w) *Bejoy Chand v. P. K. Mazumdar*, 13 C. L. J. 159.

(x) *Jagabandhu v. Nandlal*, 50 I. C. 798.

(y) *Secretary of State v. Fakir Mohammad*, 45 C. L. J. 185 : 101 I. C. 349 : 1927 A. I. R. (C) 415 ; *Pramatha Nath Mullick v. Secretary of State*, 57 I. A. 100 : 57 Cal. 1148 (P. C.) ; 34 C. W. N. 289 (P. C.) : 51 C. L. J. 154.

also, although there is no reference on their behalf and an application by them for reference would be beyond time under proviso (a) to section 18 of the Act. Their claims, or, in other words, the valuation of their interests could not be lost sight of or left undetermined in valuing the interests of the proprietor or the co-sharer mukarraridars. In complying with section 21 of the Act the Court has to consider the other mukarraridars as well, (z).

Reference under Sn. 30 proceeds on the basis that the compensation settled by the Collector under Sn. 11 of the Act is to be accepted as final. In such cases the state is not a necessary party and any decision in the case is binding upon the state even if the State is not a party thereto, (a). But where without any dispute as to the total amount of compensation payable to the Collector the liability of the State to pay compensation payable to any person is enlarged or enhanced, the State is a necessary party. When the judgment of the court is inextricably bound up with the liability of the State to pay compensation to the party and if the judgment of the Court stands there is no obligation on the part of the State to pay any part of the enhanced compensation to the party. That liability cannot be revived, enlarged or enhanced by a compromise to which the State is not a party. The decree based in such a compromise can not be enforced against the State, (b).

Reference under section 30 lies even after payment :—Though the L. A. Act clearly contemplates that when there is a dispute as to apportionment, the reference to the Civil Court under section 30 should be made before any payment has been made, still there is nothing in the Act that prohibits the L. A. Collector from making the reference after the payment of compensation to one of the parties. When such a reference has been made it is undesirable that the party who succeeds in showing that the Collector's order was wrong should have to resort to a regular suit to compel the opposite party to refund the compensation to which he has been held not to be entitled, nor can the rights of the opposite party be in any way prejudiced by the reduction of litigation, (c). References under section 30 are not subject to limitation and the Collector may make them at any time.

Writ petition :—Where the jurisdiction of an administrative authority depends on a preliminary finding of fact, the High Court is entitled in a proceeding under Art. 226 of the Constitution of India for a writ of certiorari to decide whether the finding of fact is correct or not. The existence of a dispute as to apportionment is a question of jurisdiction and fact, so the Land Acquisition Officer can not have any jurisdiction to make a reference to Civil Court unless such a dispute existed, (d).

Distinctive features of apportionment :—The apportionment of the compensation is intended to be distinct from that of settling the amount of compensation under the previous provisions of the Act, and any dispute as to

(z) *Nagendra Nath Sahi v. Bhagwati Prasad Narayan Singh* 223 I.C. 553 : 1946 A. I.R. (Pat.) 447.

(a) *State of West Bengal v. Kisson Chand*, A. I. R. 1960 Cal. 506.

(b) *State of W. B. v. Kisson Chand*, A. I. R. 1960 Cal. 506.

(c) *Satish Chandra Singhee v. Ananda Gopal Das*, 20 C. W. N. 1816 : 33 I. C. 253.

(d) *Sudhansu Kumar Ghose v. L. A. Officer, Patna*, A. I. R. 1961 Pat. 150, *Chandeswari Prasad Narain v. State of Bihar*, A. I. R. 1955, Pat. 104.

apportionment is decided as between those persons, who are actually before the court, (e). Section 51 of the old Act X of 1870 contemplated a reference when the question of the title to the land arose between the claimants who appeared in response to the notice issued under section 9 and who set up conflicting claims one against another as to the land acquired which the District Judge as between such persons could determine (f).

The market-value of the land acquired may be determined on many hypothetical considerations. But the question of the apportionment of the sum awarded as between the landlord and his tenant must be based not on hypothetical grounds but on the accurate determination of the value of their respective interests in the land. The moment the land is acquired, it ceases to be the property of both the landlord and the tenant, and it is consequently erroneous to bring into consideration the hypothetical assumption that the land would continue to be covered with huts for 42 years and that at the end of that period would be delivered by the tenant to the landlord, (g). In awarding compensation for a vacant piece of land the existence of a hypothetical tenant on each plot was assumed and calculation was made of the respective values of what was designated as landlord's interest and raiyat's interest. The total of the sums which represented the values of these interests was taken as the value of the land. It was held by the High Court that the award was based on unsound principles, (h).

Separate notices of apportionment imperative :—A separate notice of the apportionment proceedings is requisite to bind any person by those proceedings and where such a notice has not been served, any party interested, although served with notice of the proceedings for settling the amount of compensation, cannot be considered a party to the proceedings for apportioning it and is not barred by the decision in the latter proceedings, from bringing a suit under the proviso to section 40 [now sec. 31] to recover a share of the money so apportioned, (i).

Principle of apportionment :—No fixed principle can be laid down regarding the apportionment of compensation allowed by Government under Act I of 1894, (j). Every case must depend on its own circumstances, on the evidence given and the nature of the property. The number of years' purchase which it would be right to allow with regard to one sort of property might not be a fair allowance for other sort of property, (k).

The Collector has under sec. 11 to enquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation he has to apportion the said compensation among all the persons known or believed to be interested in the land of whom or of whose claim he has information. Under sec. (3) (b) the expression "person interested" includes all persons claiming an interest

(e) *Hurmutjan Bibi v. Padmalochan Das*, 12 Cal. 33.

(f) *Imdad Ali Khan v. Collector of Farakhabad*, 7 All. 817.

(g) *Nayan Manjuri v. Hem Lall Dutt*, 32 C. L. J. 137 : 58 I. C. 417.

(h) *Hem Chandra v. Secretary of State*, 31 C. L. J. 204 : 56 I. C. 758.

(i) *Hurmutjan Bibi v. Padmalochan Das*, 12 Cal. 33.

(j) *Maharaja Bir Chunder v. Nobin Chunder Dutt*, 2 C. W. N. 453.

(k) *William Heysham v. Bholanath*, 17 W. R. 221.

in compensation to be made on account of the acquisition of land under the Act. It is quite possible that a person may be interested in the compensation money without having any interest in the land in the legal sense of the term. The Act does not indicate *how the Collector is to effect the apportionment* and secs. 20 and 28 which deal with the proceedings of the Court when a reference has been made under sec. 18 are also silent on the question. It is not correct that in apportionment the market-value of each interest is to be ascertained. The various rights of female members of a Hindu undivided family in the joint family property had no market value, though such members would be interested in the compensation money. What the Collector and the Court have to do is to apportion the sum awarded amongst the persons interested as far as possible in proportion to the value of their interests and it is impossible to lay down any general rule which can be followed, (l).

What the judge has to do (under sec. 39 of the old Act X of 1870) so far as the apportionment is concerned is to "decide the proportions in which the persons interested are entitled to share such amount," such amount is the amount of compensation which has been settled. There is nothing in the section to suggest that the judge should not decide as between rival claimants to compensation where the claimants respectively claim the whole amount or proportionate part only, all questions of title upon which the right to share in the amount and the portion to be awarded to them respectively would depend, (m). Where land which is taken under the L. A. Act belongs to two or more persons the nature of whose interest therein differs, the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein so far as such value can be ascertained. (n). The determination of the question, who are the persons to whom the amount of compensation awarded for acquisition of land is payable depends upon the ascertainment of the rights and interests of the several claimants to the property at the time of its acquisition, (o).

Apportionment is not a mere division but division in the proportion of the interests of the parties concerned. In apportioning between different parties, the total amount of the compensation money, which is often determined on many hypothetical considerations without regard to the actual value of the interests of the different parties, the correct procedure is first to ascertain separately the actual values of the different interests, if they have not been separately assessed, then to determine the ratio that such values bear to each other and then divide the money between several parties in ratio of their respective interests so determined. To determine first the actual value of the interest of one party, give the same to him in full out of the compensation money and leave the balance for the other or others is entirely erroneous and inequitable, (p).

(l) *In Re. the L. A. Act in the matter of Pestonjee Jahangir*, 37 Bom. 76 : 14 Bom. L. R. 507 : 15 I. C. 771.

(m) *Husaini Begam v. Husaini Begam*, 17 A. 573.

(n) *Hirdey Narain v. Mrs. M. J. Powell*, 35 All. 9.

(o) *Chairman Howrah Municipality v. Khettra Krishna Mitra*, 4 C. L. J. 343.

(p) *Surendra Nath Sarkar v. Pyari Charan Law*, 42 C. W. N. 1191.

Parties to the reference :—See Notes under sec. 20. Notice ought to be issued to all parties on whom the apportionment proceedings are to be binding. The Government is not necessary or proper party to the apportionment proceeding, (q).

Addition of a new party :—The Court dealing with a reference under sec. 30 of the L. A. Act has no jurisdiction to add as a party a person who was not a party to the proceeding before the Collector who wishes to raise a new question not covered by the reference as made. It is held an addition of parties may indeed be made when the persons who desire to be added as parties do not raise any new dispute but want to place other materials before the court in connection with the dispute that is referred to it by the Collector. But it can not be permitted in a case like this where the question sought to be raised is entirely a new one and is not covered by the reference made by the collector, (r). In the case of a reference by the Collector under section 30 a "person interested" within the meaning of section 3 (b) of the Act can apply to the Court to be joined as a party to the reference made by the Collector although his name does not appear in the reference made, provided the question raised by him is in essence the dispute referred, (s).

What the claimant has to prove under section 30 :—When Government acquires immovable property under the L. A. Act it is for the person claiming compensation to establish his title to it affirmatively, (t). To support claims to lands acquired under section 30 of the L. A. Act, the claimants must show title or in the absence of title-deeds, effective *occupation*. Evidence of acts of ownership over lands in the vicinity or of parts of the entire plot, in which the land acquired is situate, is evidence of *de facto* possession of the land acquired only in case of rightful owners and the rule should be applied with caution and reservation in favour of a wrong-doer, (u). If neither party was found to be in possession there was no reason why on the objection of a person not found to be in possession the appellants should be made to refund the compensation money, (v).

A claimant in a land acquisition proceeding can get no share of the compensation without establishing either title to or possession of the land acquired, (w). Where land is compulsorily acquired by the Government for public purposes, and rival claims are made in respect of the compensation awarded for such land, the *prima facie* title to the money is with the party who was in sole and exclusive possession of the land at the time of its

(q) *Narash Chandra Bose v. State of W. B.* A. I. R. 1955 S. C. 398.

(r) *Sm. Indumati Debi v. Tulsi Thakurani*, 45 C. W. N. 912 : 198 I. C. 279 : A. I. R. (1942) Cal. 53.

(s) *Special L. A. Officer v. Umed Laloo*, I. L. R. (1942) Kar. 157 : 200 I. C. 639 : A. I. R. (1942) Sind. 82 ; *Sunderlal v. Paramsukhdas*, A. I. R. 1968 S. C. 366.

(t) *Secy. of State v. Satish Chandra Sen*, 57 I. A. 339 : 58 Cal. 858 (P. C.) : 35 C. W. N. 173 (P. C.) : 53 C. L. J. 1 : 33 B. L. R. 175 : 1931 A. L. J. 249 : 60 M. L. J. 142 : 130 I. C. 616 : 1931 A. I. R. (P. C.) 1.

(u) *Mohini Mohon Roy v. Promoda Nath Roy*, 24 C. 256 : 1 C. W. N. 304.

(v) *Kakkolangara v. Kerala*, 6 M. L. T. 139 : 2 I. C. 931.

(w) *Satish Chandra Singha v. Ananda Gopal Dass*, 20 C. W. N. 816.

acquisition by the Government, and the onus is on the party claiming that he has a better or superior title to such money to prove such title, (x).

Power of Court to stay apportionment proceedings :—In a reference to the Improvement Tribunal under section 18 of the Land Acquisition Act in the apportionment case, one of several Mahomedan claimants, at whose instance the reference was made, an application was made for stay of the proceeding pending the disposal by the High Court of certain probate proceedings. The president of the Tribunal refused the application for stay and held that the genuineness and validity of the alleged will should be tried by the Tribunal, but refused to give the applicant time for production of the will and dismissed the case. It was held that the reference should not have been dismissed without the opportunity being given to the claimant to secure the production of the original will which has been lodged in the High Court. Such a course was rendered imperative by reason of the possibly far-reaching effect of the decisions upon question of title by Land Acquisition Tribunals. The Court has inherent power to postpone the hearing of a suit pending the decision of a selected action and to make an order for the stay of cross-suits on the ground of convenience. This inherent power is not to be exercised capriciously or arbitrarily, it is to be exercised to facilitate that real and substantial justice for the administration of which alone courts exist, (y).

Apportionment between owners of land and building :—Where an estate consisting of land and building is acquired under the L. A. Act and the ownership of the land and the building vests in different persons, in apportioning the amount of compensation between the owner of the land and the owner of the building the Court should take into consideration the fact that the owner of the land has a right to call for removal of the house in which the owner of the building will get only the costs of the materials. The Court should also consider the possibility that but for the acquisition the owner of the house would be a possible purchaser who might be willing to pay more than the demolition value, (z).

Apportionment between the servient and dominant owners :—When Government is seeking to acquire land which is subject to an easement, it has got to pay compensation to the land-owner, that is the owner of the servient tenement and it has also got to pay compensation to the owner of the easement. It is obvious that the value of the easement bears no relation to the value of the servient tenement. If it happens that the easement is of no great value, then Government may acquire both the servient tenement and easement at a price which is less than the market-value of the land free from the easement. But all that means that the value of the whole is greater than the combined value of the parts and the increased value arising from the union

(x) *Manche Anege Akue v. Manche Kojo Ababio IV*, 47 C. L. J. 337 (P. C.) : 30 Bom. L. R. 755 : 107 I. C. 347 : 1927 A. I. R. (P. C.) 262.

(y) *Syed Abdul Alim v. Badaruddin Ahmed*, 28 C. W. N. 295 : (1924) A. I. R. (C) 757 ; *Kalipada Banerjee v. Charubala Dasse*, 60 Cal. 1096 : 1933 A. I. R. (Cal.) 887.

(z) *Narayàn Das Khettry v. Jatindra Nath Roy*, 54 Cal. 669 (P. C.) ; 31 C. W. N. 965 (P. C.) : 46 C. L. J. 1 : 29 Bom. L. R. 1143 : 53 M. L. J. 158 : 8 P. L. T. 663 : 1927 M. W. N. 461 : 102 I. C. 198 : 1927 A. I. R. (P. C.) 135.

of interests necessarily belongs to the Government in whose hands the union takes place, (a).

Apportionment between landlord and tenant :—After the value of the land had been assessed, any question as to the extent of the rights given by the landlord to his tenants could be raised between the parties at the time of apportionment. The burden of apportionment should not be laid on the Secretary of State, nor should the public purse be made to bear the costs incidental thereto, (b).

Where a tenant agreed to repair a building under certain cost and also agreed that, if at any time, the premises is acquired under any law, the lessee would not be entitled to any portion of the compensation payable under the Act, (c).

Where land has been taken by Government and compensation has been paid to a party who has received more than his share of the compensation he must account to the other party, that is, if the landlord receives the whole amount and the tenant has not got any portion of the compensation the landlord is bound to abate the rent. On the other hand, if the tenant receives the whole of the compensation without paying the share due to the landlord, he is not entitled to retain the whole compensation and refuse to pay the whole of the rent, (d). A zaminder is entitled to no share of the compensation awarded by land acquisition authorities in respect of lands held under him by kheraji brahmottardars when the minerals in the land have not been acquired and when the rent is mokerari in respect of which no abatement has been allowed or is claimed, (e). In cases of apportionment of the compensation amount between the landlord and the tenant, it is almost impossible to lay down any rigid rule of universal application. In vast majority of cases the apportionment is bound to appear arbitrary. The ratio of apportionment between them may be different in different cases and would depend on particular facts admitted or proved. Where there is no evidence one way or the other it has to be made only on general considerations, namely, to divide it according to the relative value of the interest of the landlord and tenant. It was held that the ratio of 10 to 6 as between landlord and tenant was fair, (f).

Apportionment between landlord and tenure-holder :—When in land acquisition proceedings the case of intermediate tenure-holders is that the superior zeminder is entitled to the compensation awarded only to the extent of the amount that he has agreed to grant abatement of in the rent, they must show that their interest is permanent, that the landlord has parted with his *prima facie* right to enhance the rent and that the rent is mokerari. *Prima facie* the zeminder has the whole of the interest ; it is for the tenure-holders

(a) *Government of Bombay v. C. S. M. Co.*, I. L. R. 1942 Bom. 403.

(b) *Collector of Jalpaiguri v. The Jalpaiguri Tea Company Ltd.*, 58 Cal. 1345.

(c) *Purna Chandra v. Sk. Fakir Mohammad*, 59 C. W. N. 568.

(d) *Ganes Dadu Jadhav v. R. R. Panditrao*, 32 Bom. L. R. 1243 : 128 I. C. 899 : 1930 A. I. R. (Bom.) 592.

(e) *Raja Jyoti Prasad Sinha Deo Bahadur v. Kenaram Dubey*, 37 C. W. N. 702 : 1933 A. I. R. (Cal.) 767.

(f) *Laxmanrao v. Jagannath*, 1941 N. L. J. 620 ; 199 I. C. 327 : 1942 A. I. R. Nag. 32.

to show what part of the interest the zaminder has divested himself of in their favour, (g).

In apportioning compensation money awarded under the L. A. Act between the landlord and the tenure-holder, the Court ought to proceed on the principle of ascertaining what the value of the interest of the landlord is on the one hand and that of the tenant on the other, and to divide the sum awarded between them in accordance with these values. Where the rent is fixed in perpetuity the landlord is not entitled to more than the capitalised value of his rent, (h). Where a raiyat's rent is fixed in perpetuity, it would be enough in apportioning compensation to capitalize this rent according to the rule laid down in *Dinendra Narain Roy v. Tituram Mukherjee*, supra, in order to arrive at the share due to the landlord ; but where that is not the case, this rule will not be sufficient and some other means of calculation must be adopted. The Government as landlord are entitled to a compensation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken together with 15 per cent for compulsory acquisition and something more in respect of the possibility of the enhancement of the value of the land hereafter, (i).

Premium or *Selami* an important factor for consideration in apportionment :
—In a L. A. case there were two sets of claimants, one was a tenure-holder and the others were sub-tenants in actual occupation of the land acquired. The Collector awarded to the tenure-holder the capitalized value of the rent actually recovered by him from the sub-tenants. It was contended on behalf of the tenure-holder that the award was inadequate. On the other hand, it was contended on behalf of the Secretary of State that at the time when the tenant in occupation transferred his interest to the present occupant, the rent being increased from Rs. 24 to Rs. 36 per bigha it was not probable that the rent could be further increased and consequently the capitalized value of the rent was more than adequate. Mookerjee J., in delivering the judgment observed : "This argument may be conceded not without weight, but it does not take into account one important element in the case. When the rent was enhanced from Rs. 24 to Rs. 36 per bigha, a *premium* was paid by the new tenant to the landlord at the rate of Rs. 192 per bigha, in other words, the landlord at the time took the premium and did not claim a higher rent as he might well have done if no premium had been paid. Consequently it was not sufficient to award to the tenure-holder the capitalized value of the rent as then settled. In our opinion the amount awarded to him should be increased by Rs. 192 per bigha, (j).

(g) *Radhu Roy v. Raja Jyoti Prasad Singh Deo*, 36 C. W. N. 866 : 140 I. C. 385 : 1933 A. I. R. (Cal.) 21.

(h) *Dinendra Narain Roy v. Tituram Mukherjee*, 30 Cal. 801 : 7 C. W. N. 810 : see also *Raye Kissori Dassee v. Nilcantia Dey*, 20 W. R. 370 : *Gadqadhar Das v. Dhanpat Singh*, 7 Cal. 585, *Dunne v. Nabarkishna Mukherjee*, 17 Cal. 144 ; *Raja Khettra Krishna Mitra v. Kumar Dinendra Roy*, 3 C. W. N. 202 ; *Shyama Prosanna Bose Mazumdar v. Brakoda Sundari Dassi*, 28 Cal. 146.

(i) *Jagat Chandra Dutta v. The Collector of Chittagong*, 17 C. W. N. 1001.

(j) *Girls Chandra Roy Chowdhury v. Secretary of State*, 24 C. W. N. 184.

Apportionment between landlord and tenant in respect of accreted land :

—When land emerges from a river it is given to the person who owns the adjacent land, (j-1). In the absence of any special circumstances the rate of rent to be assessed upon an accretion should be in proportion to that paid for the present tenure. When therefore such accreted land is taken up under the L. A. Act, compensation awarded should be divided by giving the landlord the value of the rent payable in respect thereof with 15 per cent statutory allowance and the balance to the tenure-holder, (k).

Apportionment between landlord and Ghatwali tenure-holder :—According to Reg. XXIX of 1814, the zaminder retains an interest in Ghatwali lands and compensation money for lands taken up under the L. A. Act should be divided by the parties entitled to it in the ratio of their respective interests in the land. The munsiff found that the amounts derivable from the lands in question by the mokuraridar and the zaminder respectively were Rs. 22/8 and Rs. 7/8 out of Rs. 30 which will make the mokuraridar's share $\frac{2}{3}$ and the zaminder's $\frac{1}{3}$ and the plaintiff was declared entitled to $\frac{2}{3}$ and the defendant $\frac{1}{3}$ of the compensation money (l). In a suit by a Ghatwal to recover compensation money deposited in the Government treasury for land appertaining to a Ghatwali taluk which had been taken for railway purposes, the defendants who claimed to participate in the compensation were the zaminders, of whose zamindari the Ghatwali taluk was a component part and the representatives of one B, who had held a sub-tenure in the Ghatwali Mahal. It was held that, as the zaminder has sustained no loss, but would continue to receive from Government under Reg. XXIX of 1814 (sec. 4) the same profits as they had hitherto enjoyed, they were not entitled to any compensation. As B had not during the life-time any valid title to any portion of the lands taken, but was allowed to remain in possession by the mere sufferance of the Ghatwal, his representatives were not entitled to a share in the compensation ; that the plaintiff being a Ghatwal, and not absolute owner, was entitled only to the interest of the compensation money which he was bound to keep in tact as a part of the Ghatwali property, (m).

Apportionment between zaminder and patnidar :—There can be no question that the patnidar is entitled to compensation though there may not be any contract to that effect between him and the zaminder, (m-1) As regards the zaminder it is a mistake to suppose that his interest in the land is confined entirely to the rent which he receives from the patnidar. He is the owner of it under the Government ; and in the event of the patni coming to an end by sale, forfeiture or otherwise, the property would revert to the zaminder who might deal with it as he pleases in its improved state ; and although in some cases and possibly in his, the chances of the patni coming to an end may be more

(j-1) *Haji Umar Din v. Khair Din*, 138 P. W. R. 1909 : 4, I. C. 1146.

(k) *Chooramani Dey v. Howrah Mills Co. Ltd.*, 11 C. 696.

(l) *Bhageerath Moodie v. Raja Khan*, 18 W. R. 191.

(m) *Ramchandra Singh v. Raja Mahomed Jowhuruza Khan*, 23 W. R. 376 : 14 B. L. R. App. 7.

(m-1) *Joykishen Mukherjee v. Reazonnissa Bibi*, 4 W. R. 40.

or less remote there is no doubt that in all cases, the zaminder is entitled to some compensation for the loss of his rights. At any rate he would be entitled to receive at least as much as the patnidar. If the patnidar continues to pay and receive the same rent which he did before (acquisition), or if on the other hand, he both makes an abatement to the derpatnidar, and obtains an abatement from the zaminder, as a rule, he is no sufferer ; because generally speaking the difference between the amount of rent which he pays and the rent he receives, represents the improved value of the land which he gets from his derpatnidar. It may be, of course, that his patni interest would sell in the market for a price larger than the capitalised value of the rent which he receives from his darpatnidar ; and if so he would be entitled to be compensated for the loss of the difference out of the same payable by the Government. But as a rule the capitalised value of the darpatni over and above the value of his own outgoing would represent the market-value of the patni interest, (n).

Where land held in patni is taken by Government for public purposes the proper mode of settling the rights of the parties interested is to give the patnidar an abatement of rent in proportion to the quantity of land which has been taken from him and to compensate the zaminder for the loss of rent which he sustains. Accordingly the compensation awarded was held to have been fairly distributed where the zaminder received little more than 16 years' purchase of the rent abated and the patnidar received the remainder, (o). In (p), the District Judge on the authority of *Gadadhar Dass v. Dhunput Singh*, (n) held, that the compensation would be divided equally between the zaminder and the patnidar. The patnidar appealed and contended that inasmuch as he had received no abatement of the rent payable by him to the zaminder, he is entitled to the full amount awarded. The principle of distribution adopted by the District Judge was accepted as correct and in deciding the case their Lordships observed : "it seems to us that *no general principle can be laid down applicable to every case as between zaminder and the patnidar*. The apportionment between the zaminder and the patnidar will depend partly on the sum paid as bonus for the patni, and the relation it bore to the probable value of the property, and partly on the amount of rent payable to the zaminder, and also the actual proceeds from the cultivating tenants and under-tenants. It may occasionally happen that the zaminder receives an extremely high bonus and is content with charging the property with the receipt of a very low rate of rent, or it may be that the bonus is almost nominal and the rent is excessively high and the zaminder depends not on the bonus and the interests of the amount so paid and invested in some other way, but on the amount paid periodically as rent, and consequently as between the parties standing in these relations, it is necessary to consider all these matters before any conclusion can be arrived at as to their right to any particular compensation."

(n) *Gadadhar Dass v. Dhunput Singh*, 7 C. 585.

(o) *Raye Kissory v. Nilcanta Dey*, 20 W. R. 370.

(p) *Bunwari Lal Choudhury v. Surnomoyee Dass*, 14 Cal 749.

Where a portion of a patni is acquired by Government under the L. A. Act, the patnidar is entitled to abatement of rent at the hands of the zaminder, if the land taken up by Government is absolutely lost to the patnidar and he is also entitled to some share of the compensation money. In the well known case of the *Burdwan Raj* (S. D. A. for 1860, p. 336) the rule of proportion as to abatement of rent was thus laid down, "as the gross rental of the whole patni is to the gross rent of the land proposed to be taken, so will the entire patni rent be to the particular portion of the rent to be remitted." Then as regards the amount of compensation the rule is thus laid down "As the gross profit of the patni is to the profits of the patnidar, so will the gross compensation be to the portion of the compensation the patnidar is entitled to recover." But this latter rule has not been strictly followed in other cases, notably in the case of, (q):

Where the whole of the compensation money for land acquired under the L. A. Act was awarded to the patnidar on the ground that as the zaminder had not allowed an abatement of rent on account of the land acquired they were not entitled to a share of the compensation money and the zaminder's case was that as the patnidars did not get themselves registered in the books of the zaminder under the provisions of the Patni Regulation, their title was not protected and they were not entitled to claim any portion of the compensation money. It was held that the patnidars were entitled to the compensation money and the zaminders to no portion of it.¹ Under sec. 6 of the Patni Regulation the landlord may demand a fee for the registration in his books of the name of the purchasers of a patni as also security from him, but the omission to pay the fee and the security does not affect in any way the title of the purchaser where rights are perfected upon the transfer by the patnidar and are not in any way contingent for their validity upon the payment of the fee and security. If the zaminders allow an abatement of rent to the patnidars, the rent abated primarily represents their annual loss and they may reasonably claim out of the compensation money the capitalised value of that rent, but if they do not allow such abatement they do not suffer any immediate loss by reason of the acquisition, (r).

Apportionment between darpatnidar and ryot :—The parties who usually suffer most from lands being taken by the Government for public purposes are either the ryots with rights of occupancy or the holders, whoever they may be, of the first permanent interest above the occupancy ryots. The actual occupier is, of course, turned out by the Government and if he is a ryot with a right of occupancy, he loses the benefit of that right besides being driven possibly to find a holding and a home elsewhere, and the holder of the tenure immediately superior to the occupying ryots, whatever the nature of the holding may be, loses the rent of the land taken during the period of his holding. These two classes, therefore, would, generally speaking be entitled to the larger portion of the compensation and if the

(q) *Shama Prosunna Bose Mozumdar v. Brakoda Sundari Dasi*, 28 Cal. 146 ; *Bhobani Nath Chuckerverty v. Land Acquisition Deputy Collector of Bogra and Moharaja Jatindra Mohan Tagore*, 7 C. W. N. 131.

(r) *Ganpat Singh v. Moti Chand*, 18 C. W. N. 103.

darpatnidar belongs to the latter class, the larger portion of the compensation ought, presumably to have gone to him, (s).

Apportionment between landlord and mourasi mokurari tenants :—In apportioning the compensation between landlord and tenant the court should proceed on the principle of ascertaining what is the value of the interest of the landlord on the one hand and that of the tenant on the other and apportion the compensation according to those values, (t). It was decided that the land acquired was subject to a mokurari lease in favour of Government and as regards the rate of valuation twenty three years' purchase was allowed by the District Judge and there being no appeal upon that point by the Government, the claimants were allowed the whole of the compensation money by the High Court as there was no deduction on account of Govt. revenue. The onus of proving permanent tenancy right is on the tenant, (u).

In (v), a person claimed to hold a mourasi mokurari title to certain land which was acquired under the L. A. Act but could produce no pottah or evidence of title other than certain rent receipts which showed that he or his predecessors in title had held the land in question for nearly one hundred years at, presumably, a fixed rent, the nature of the tenure not being mentioned in such receipts. It was held that the presumption was, in the absence of any evidence to the contrary, that the claimant had a permanent and transferable interest in the tenure and not merely an interest in the nature of a tenancy-at-will and this presumption was strengthened by the fact that his superior landlord the lakhirajdar had made no attempt to eject him or his predecessors-in-title during this long period and the compensation money was apportioned between the landlord and tenant in the manner laid down in *Mohendra Nath Bose v. Rohini Bewa* (unreported), (v-1) viz., by allowing fifteen years of the rental to the landlord (abatement being granted to the ryot) and by dividing the balance between the two parties in equal shares. "Though in the apportionment of compensation-money between the landlord and the tenant in a L. A. proceeding sec. 50 (presumption as to fixity of rent) of the Bengal Tenancy Act has no direct application, the principle involved in that section is a useful guide to the Courts in matters of this nature," (w).

A zaminder is entitled to no share of the compensation awarded by L. A. authorities in respect of lands held under him by kheraji brahmottardars when the minerals in the land have not been acquired and when the rent is mokarari in respect of which no abatement has been allowed or is claimed, (x). Where a landlord granted a permanent lease of his *kudivaram* interest

(s) *Gadadhar Dass v. Dhunput Singh*, 7 C. 585.

(t) *Hakim Singh v. The Collector, Gurdaspur*, 136 I. C. 10 : 32 P. L. R. 864 : 1932, A. I. R. (L) 123. In *Secretary of State v. Sham Bahadur*, 10 C. 769.

(u) *Bejoy Chand Mahatap v. Gurupado Halder*, 32 C. W. N. 720 : 117 I. C. 842.

(v) *A. M. Dunne v. Nobokrishna Mookerji*, 17 C. 144.

(v-1) *Mohendra Nath Bose v. Rohini Bewa*, (Appeal from O. C. No. 311 of 1886 decided on 20. 8. 1887), unreported.

(w) *Nanda Lal Goswami v. Atarmonee Dasee*, 35 Cal. 763.

(x) *Raja Jyoti Prasad Singh Deo Bahadur v. Kenaram Dubey*, 37 C. W. N. 702.

(interest of the man in occupation of the land for cultivating or utilising the land for any purpose for which it has been given) in land on receipt of Rs. 150 from the tenant and on condition of payment of Rs. 4 per year reserving to himself the *melwaram* interest (rest of the interest minus *kudivaram* interest ; it is not merely a right to receive rent but several other rights, *e. g.*, right to forfeit the permanent tenancy if the tenant denies his title) in the land, and the land was subsequently acquired under the L. A. Act, it was held in a dispute as to apportionment of the compensation money that the interest of the landlord or *melwaramdar* was not confined to the right to receive the annual rent of Rs. 4 but also certain other rights and, therefore, it could not be valued merely at 20 years' purchase of the rent reserved in the lease, but the apportionment of the compensation as between the landlord and tenant-at $\frac{1}{3}$ and $\frac{2}{3}$ is not erroneous, (y).

The established rule in such cases is that the landlord should get the capitalised value of the rent plus something more on account of right of reversion vested in him. There is no fixed basis on which the right of possible reversion can be valued in terms of money. The balance must go to the permanent tenant in whom the rest of the rights in land vest, (z).

Apportionment of compensation for Bhati lands in Bombay :—Two villages of Kanjore and Vikhroli were granted to the Khot of Powai under a perpetual lease, dated July 7th, 1835. Certain Bhati lands (waste lands producing grass) in those villages were acquired by Government for railway purposes under the L. A. Act, 1894. The Khot claimed the whole of the compensation but the villagers claimed that they had acquired a substantial interest in the Bhati lands by long and continued user thereof adversely to the Khot. The evidence showed that the Bhati lands had been enclosed ; that they had been sold by registered sale deeds ; that they had passed from hand to hand under these sale deeds and that the Khot was perfectly aware that the villagers were thus dealing with them. It was held that the villagers had acquired by their action an interest in the Bhati lands and were therefore entitled to compensation, [(a), discussed and distinguished ; apportionment of compensation in respect of the Bhati lands in proportion of one to the Khot and two to occupants approved]. (b).

In awarding compensation for the acquisition of khoti lands the value of the interests of the superior landlord must be included in the award and not deducted from the value of the occupant's interest. The method of apportioning compensation between the occupant and the Khot in the proportion of two to one can only be made applicable in the case of

(y) *Natesa Iyer v. Raja Maruf Sahib*, 50 Mad. 706 : 25 L. W. 291 : 52 M. L. J. 295 : 38 M. L. T. 128 : 100 I. C. 628 : 1927, A. I. R. (Mad.) 489.

(z) *Sri Thakur Govind v. Thakur Rangji Maharaj*, I. L. R. (1962) 2 All. 453 : 1963 All. L. J. 587.

(a) *Vasudev Bhaskar Pendse v. Collector of Thana*, (1897) P. J. 274 and *Harish Chandra v. Sorabji* (P. J. 9 and 444).

(b) *Vallabhdas Narayanji and Amritlal Amarchand v. Special Land Acquisition Officer for Railways*, 46 Bom. 272.

Warkas or Bhati lands which are not surveyed and which cannot be considered to be in the exact occupation of any particular tenant, (c).

Apportionment of compensation for Toka lands :—Where Toka lands are being acquired, toka tenants are entitled to some consideration in fixing the rate of assessment on the value and the rate at which it would be capitalised and they are not to be treated as if on the expiry of the period of their leases they would be rack rented of their lands, (d).

Apportionment of compensation for Mirasi lands in Madras :—Vilakhu money, customarily paid by house-holders in Malabar to the temple on whose lands they are living is in the nature of quit rent and a grant of the said sites to the householders by the Rajahs, though conferring a permanent tenure on the grantee is subject to the payment of the quit rent. Though as a rule the landlord would ordinarily be entitled to share with the tenant actually in occupation, in the compensation paid for lands taken up by the Government under the L. A. Act 1894, he may be refused a share if owing to the small extent and value of the land acquired, it is impracticable to apportion the compensation, (e). Certain lands which had been waste from time immemorial were taken up by Government and compensation awarded. Claims were made by the Mirasidars for the amount so awarded. The rights of the Government in the lands had been alienated by Government to certain Shrotriendars, who also claimed to be entitled to the amount awarded as compensation. It was held that the Shrotriendars were entitled, (f).

Apportionment of compensation for acquisition of watan properties in Madras :—It can not be said that the Court has no power under the L. A. Act to apportion the compensation when watan properties are compulsorily acquired between the watandar and the alienee. The question of apportionment has to be determined with reference to the respective rights and liabilities of the rival claimants. When watan property has been alienated and is in the alienee's possession, the alienee being liable to pay a fixed rent to the watandar, some allowance has to be made on account of the fact that the alienee is liable to pay enhanced rent and the enhancement is not necessarily limited to the same extent as in the case of a permanent tenant. It was held that in the circumstances of the case and having regard to the unusual nature of the rights of the parties, the shares of the watandar and the alienee should be in the proportion of 55 to 45, (g).

Apportionment in case of 'Jenmi' tenant in Kerala :—It has been held in a Kerala case, (h), tenancies being governed under the Malabar Tenancy Act and there being no satisfactory evidence as to the market-value of the

(c) *Gajanan Vinayak v. Assistant Collector, Salsette*, 25 Bom. L. R. 480 : 85 I. C. 11 : (1924) A. I. R. (B) 54.

(d) *Government of Bombay v. Khanderas Ram Chandra Tapade*, 25 Bom. L. R. 794 : 77 I. C. 137 : (1923) A. I. R. (B) 417.

(e) *Cherria Pangy v. Kirishna Pattai*, I. L. W. 767 : 28 I. C. 8.

(f) *Sivanatha Naicken v. Nattu Ranga Chari*, 26 Mad. 371.

(g) *Somashekhar Swami v. Bapu Saheb Nara*, 49 Bom. L. R. 784 : A. I. R. (1948) Bom. 176.

(h) *Raghavan Unni v. Athar Rowther & Others*, A. I. R. 1959 Ker. 8.

interest of the tenant and the landlord, that the tenant is entitled to the value of all improvements made by him, to value of all trees and improvements of which exclusive rights were given to him, to value of all quarries which the tenant was working by virtue of a right under sn. 56 (2) of Malabar Tenancy Act. In (i), it has been held that the apportionment should have been made on the proportion of the respective income which the parties derived from the properties. But in (j), it has been held that the rule of law as stated in Krishnayyar's case, stated above, is not to be taken as a rule of law but one of practise for the guidance of Courts when parties fail to adduce any evidence.

Apportionment between landlord and tenant not having permanent rights :

—A plot of land was acquired under Act X of 1870 for the construction of a road within the town of Calcutta ; the tenants who had erected masonry buildings on portions of the land who were in possession at the time of the acquisition claimed before the collector the value of their interests : but the owner of the land claiming the whole of the compensation money. The matter was referred to the District Judge who found that the lands were originally granted for building purposes, and allowed a share of compensation money, viz., the value of the buildings, to the tenants. On appeal to the High Court by the owner of the land, on the ground that the respondents' tenures which were of a temporary character, having come to an end, when the land was acquired by the Municipality, the buildings standing on the land became his property and that the tenants were not entitled to compensation, it was held that the Judge came to a right finding on the facts, and that the owner of the land was not entitled to the buildings erected by the tenants without being liable to pay them compensation, even if the tenancy had come to an end ; it was held also that as the land was acquired by the Corporation during continuance of the lease, in the sense that the relationship of landlord and tenant was still subsisting between the parties, and having regard to section 108 cl. (h) of the Transfer of Property Act, which applies to Calcutta as well as to mufussil, the tenants were entitled to the compensation for the buildings, (k).

In (l), the plaintiff, a perpetual lessee of a village, claimed from the defendant, a tenant, the entire compensation received by the latter under the L. A. Act in respect of a house site in the *abadi* of the village. The village wazib-ul-arz declared the right of the defendant to occupy the site as long as he pleased but also declared the right of the plaintiff to resume the site, of the house after the occupant left the village, the latter having the right to transfer the materials of the house. It was held that the defendant had no interest in the land but was a mere licensee to occupy it and that he was not, therefore, entitled to any portion of the compensation awarded for the acquisition of the site under the L. A. Act.

(i) *Krishna Ayar v. Kuthira Vattath Nayar*, 1958 Ker. L. J. 613 : I. L. R. (1958) Kerala 1404.

(j) *Raja Krishna Menon v. Raman*, A. I. R. 1961 Ker. 140.

(k) *Jugat Mohini Dass v. Dwarka Nath Basack*, 8 Cal. 582. *Dunia Lal Seal v. Gopi Nath Khettry*, 22 Cal. 820.

(l) *Shankar Govind, v. Kisan*, 45 I. C. 554.

Apportionment between landlord with right of reversion and tenant :—Where a possible contingent right to the land acquired is vested in a superior proprietor by way of reversion, even if the right is such as a right in embryo and may never fertilise, when Government compulsorily acquires the land from the usufructuary occupants whoever they are, the superior proprietor is entitled to a portion of compensation money in respect of his possible right of reversion which is cut off for ever by the compulsory acquisition, (m).

Apportionment between landlord and tenants with transferable right of occupancy :—It has to be remembered that if there is no custom of transferability with the consent of the landlords, or if within the next 20 years the landlords could have enhanced the rent of the lands, the landlords will be entitled to some compensation for the right, (n). Where a local custom entitling landlords to a share of one-fourth of the purchase money on the transfer of an occupancy holding by raiyats, has been proved, the landlords in a case of a compulsory acquisition of a holding by the Government under the L. A. Act, ought to get that proportion of one-fourth out of the compensation money paid by the Government. The whole estate in land of which the market-value is ascertained consists, first, of the occupancy right of the tenant, and secondly of the landlord. The rights of the landlord consist of the rent charge and the reversion, included in which is his right to *nazarana* on transfer. The fact that the acquisition is compulsory does not affect either the market-value of the land or the apportionment thereof among the interests owned by different persons, (o).

In the Full Bench case of *Shiam Lal v. Collector of Agra*, (p), the question referred to the Full Bench was : "In the absence of any specific evidence as to custom, practice or agreement, what would be fair rates of distribution of the compensation awarded for agricultural land as between the landlord on the one hand and occupancy tenants on the other." The opinion of the Full Bench was : "Where the agricultural land of zaminder over which the tenant has occupancy right is acquired by Government, the compensation allowed should be apportioned in the rates of 10 to 6 as between the zaminder and tenant, in the absence of evidence to the contrary. This rough and ready rule is not to be accepted as any rule of law, but merely as a rule of practice for the purpose of forming a rough estimate of the respective rights of the zaminder and the tenants, to be guide only when both the parties have failed to adduce any definite evidence to show other considerations and circumstances which could lead to a more satisfactory assessment of their respective rights. Where either the land-holder or the tenant proves that a specific amount has been spent on an extraordinary improvement of land by him exclusively, compensation equal to that amount will have to be fixed separately for such improvement." In apportioning compensation paid for land acquired between occupancy tenants and their landlords, the

(m) *Sakariyamo Dakolo v. Moriama Dakolo*, 128 I. C. 660 : 1930 A. I. R. (P. C.) 261.

(n) *Aghori Koeri v. Kishundeo Narain*, (1926) A. I. R. (P) 16 : 3 Pat. L. R. 111 : 6 P. L. T. 797 : 88 I. C. 397.

(o) *Abdul Haque v. Secy. of State*, 11 Pat. 485 : 137 I. C. 226 : 1932 A. I. R. (Pat.) 120.

(p) *Shiam Lal v. Collector of Agra*, 55 All. 597 : A. I. R. 1934 All. 239.

proportion of the interest of the landlord and the occupancy tenant in the land acquired may be fairly taken to be same as that between the *malikana* which the tenant pays to the landlord and the land revenue, (g). It has been said in, (r), that "in the matter of determining the value of the two different interests, the landlords and the tenants, the position that the tenants on the lands acquired, had right of occupancy in the same has to be taken into consideration. There is no doubt that there is, and can be, no rule of general application applicable to apportionment between a landlord and a tenant with a permanent right of occupancy ; and what is sometimes called a rough and ready method of settling the matter of apportionment has to be adopted." It was held that the landlords are entitled to two-fifths and the tenants with rights of occupancy are entitled to three-fifths of the value of the entire interests in the lands acquired.

Apportionment between landlord and tenant where rents are enhancible :—The question arose (s), how a sum awarded as compensation for certain lands taken under the provisions of the Land Acquisition Act should be apportioned between a landlord and a tenant whose rent is enhancible, *i. e.*, whose rent is not fixed in perpetuity. The District Judge capitalised the value of the rent presently payable by the occupancy raiyat at 20 years' purchase ; he had also taken into account the chance of the rent being enhanced, and allowed 20 years' purchase of the rent enhanced at 2 annas in the rupee the highest rate practicable, (s). Maclean, C. J., in delivering the judgement in appeal observed : "the principle upon which compensation money ought to be divided is laid down in the case of, (t). It is true that that was a case of permanent tenure-holder but the underlying principle is the same. We said in that case that if the rent were enhancible the landlord would be entitled to something for that chance of enhancement. I am not disposed to follow the decision in, *A. M. Dunne v. Nobo Krishna*," (u).

In the case of property leased for a long term with a progressive rate of rent it is very difficult to come to a definite conclusion as regards the valuation to be put on the interest of the landlord so as to apportion the compensation between him and the tenant quite equitably. In the absence of any direct evidence as to what a willing purchaser would pay for the interest of the landlord in such a case, apportionment can only be made in a rough and ready way, (v).

Apportionment between landlord, raiyat and under-raiyat :—Where occupancy or other rights are claimed in land notified to be acquired under the L. A. Act, the correct rule to be observed is to value the land in the first instance, including all interests in it, and to apportion the amount so ascertained among the parties interested according to their interests. The difference between the market-value and the value of tenant's interest

(g) *Ramkishan alias Shib Charan Singh v. Jati Ram*, 132 I. C. 698 ; 1931 A. I. R. (Lah.) 649.

(r) *The Collector of Dacca v. Goblam Ajam Choudhury*, 40 C. W. N. 1143.

(s) *Bhupati Roy Choudhury v. Secretary of State*, 5 C. L. J. 662.

(t) *Dinendra Narayan Roy v. Tituram Mukherjee*, 30 C. 801 ; 7 C. W. N. 810.

(u) *A. M. Dunne v. Nobo Krishna Mukherjee*, 17 Cal. 144.

(v) *K. S. Banerjee v. Jatindra Nath Paul*, 108 I. C. 253 ; (1928) A. I. R. (C) 475.

represents the landlord's interest, (w). Where a raiyat's rent is fixed in perpetuity, it would be enough in apportioning compensation to capitalise this rent according to the rule laid down in *Dinendra Nath Roy v. Tituram Mukherjee*, (w-1), in order to arrive at the share due to the landlord : but where that is not the case, this rule will not be sufficient and some other means of calculation must be adopted. In deciding the question of apportionment between the zaminder and the raiyat, certain factors should be taken into consideration, viz., the expenses of cultivation, and the fact that the cultivator has home and sphere for labour for himself and his family, etc., There is no general rule that in all cases, where compensation has to be apportioned between zaminder and raiyat with a permanent right of occupancy, the compensation should be apportioned in the ratio of 3/5ths to the raiyats and 2/5ths to the zaminder, (x).

It was urged on behalf of the tenant that as between the landlord and occupancy raiyat the proper method of apportionment must be to give the landlord a sum representing the capitalised value of the rent plus an estimated sum for the value of possible enhancement in the future or possible forfeiture and to give the whole of the balance to the tenant. That method has been adopted in some cases. But in the present case, it was thought inapplicable in as much as the land acquired was *not agricultural land in the midst of agricultural land*. Changing conditions have given it an increased value as being prospective building site. In such circumstances it would not be right first to assess the value of landlord's interest in the land as agricultural land and nothing more and then after deducting the amount, to hand over the balance to the tenant. Their Lordships held : "in the present case the right method would be to approach the subject from the point of view of what the tenant should get as a tenant of agricultural land, and after capitalising the tenant's interest, to give the whole of the balance to the landlord," (y).

The proper course of apportioning compensation money which was awarded by the Collector would have been to ascertain first what was the landlord's interest and secondly, what was the value of the tenant's interest and having found the money value of these to apportion and divide the money accordingly. But in this country it is impossible to take that course, it is almost impossible to say what is the value of the interest, that is the precise money value of the lessee's interest on the one hand, and on the other, what is the precise money value of the landlord's interest. That being so, the Courts have adopted what perhaps may be called a rough and ready way of settling the matter. It appears that the course the courts have adopted is after providing compensation for the amount payable to the

(w) *Rajah of Pittapuram v. Revenue Divisional Officer, Coconada*, 42 M. 644 : 36. M. L. J. 455 : 51 I. C. 656 ; *The Collector of Dacca v. Haridas Bysack*, 14 I. C. 163.

(w-1) *Dinendra Narain Roy v. Tituram Mukherjee*, 30 Cal. 801 ; 7 C. W. N. 810.

(x) *Sri Raja Bommadevara Venkata Narasinha Naidu v. Atmuni Subarayadu*, 10 M. L. T. 349 : 2 M. W. N. 401 : 12 I. C. 436 ; I. L. R. 36 M. 395.

(y) *Nibas Chandra Manna v. Bepin Behary Bose*, 53 C. 407 : (1926) A. I. R. (C) 486 ; 96 I. C. 69.

landlord as rent and granting abatement to the ryot, to divide the balance between the two parties in equal shares, (z).

In assessing the proportionate value of the occupancy rights, several matters have to be borne in mind. They are these facts, viz. : (1) that an occupancy tenant's rent is liable to enhancement although within statutory limits : (2) that the tenant is unable to transfer his rights ; (3) that his right even to sublet is very much limited ; (4) that in the case of rent falling into arrears, from whatever reason, he is liable to be ejected ; (5) that in the case of the tenant dying without one of the statutory heirs the tenancy would lapse to the landlord. Having regard to all these circumstances, although a tenant may for the time being, make out of the land more than the landlord can make out of it, the actual gain of the tenant is less than that of the landlord. The landlord may easily borrow money on the security of the property and at any time may sell the property outright. The minerals under the land belong to the landlord and not to the occupancy tenant, whose rights are confined to the tilling of the upper soil. Therefore, there is a substantial disparity between the rights of the landlord and the rights of an occupancy tenant. When all is said, it remains still difficult to give a money value to the respective rights of the zamindar and the occupancy tenant. But howsoever the matter may be decided the Court must have to assign somewhat arbitrary value to the two rights and it is a fair estimate of the respective rights to say that, in a rupee, the landlord's share ought to be ten annas and the occupancy tenant's right six annas, (a).

Apportionment between an occupancy raiyat and non-occupancy raiyat :—

The difference in a question of the principle of distribution of compensation between the rights of an occupancy and a non-occupancy raiyat is not very great. The liability of a non-occupancy raiyat to enhancement of rent is larger than in the case of an occupancy raiyat ; there are grounds upon which a non-occupancy raiyat may be liable to ejection which do not apply to occupancy raiyats. These matters should be taken into consideration in apportioning the compensation, (b).

Apportionment between landlord and tenant from year to year :—When the land in question is only a tank and it was not leased for residential purposes the mere fact that rent was not charged for a considerable time, would not give rise to any inference of permanent tenancy. The fact that the tenant had been in long possession might give rise to an inference that he was a tenant from year to year, (c).

According to English law it is unnecessary to serve a notice to treat on a person who has no greater interest in the land than as a tenant for a year, or from year to year, (d). Section 121 of the Lands Clauses Act,

(z) *A. M. Durne v. Naba Krishna Mukherjee*, 17 C. 144 and *Gadadhar Dass v. Dhunput Sing*, 7 C. 585 ; *Raja Khettar Kristo Mitter v. Kumar Dinendra Narayan Ray*, 3 C. W. N. 292. *Purtap Chandra v. Nathuram*, 14 P. W. R. 1909 : 103 P. L. R. 1909 : 4 I. C. 1001

(a) *Rohan Lal v. Collector of Etah*, 1929 A. L. J. 522 : 1929 A. I. R. (All.) 525.

(b) *R. Mitter v. Anukul Chandra Mookerjee*, 2 C. L. J. 8n.

(c) *Bejoy Chand Mahatap v. Gurupada Haldar*, 32 C. W. N. 720 : 117 I. C. 842.

(d) *Syers v. Metropolitan Water Board*, (1877) 36 L. T. 277.

1845, provides for compensation to be paid to such tenant if he is required to give up possession of the land so occupied before the expiration of the term for which he holds. Such tenant is entitled to compensation for the value of the unexpired term of interest in such land, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he might sustain, or if a part only of such land be required, compensation for damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same.

A yearly tenant of a tank, is for the purposes of the L. A. Act in the same position as a yearly tenant of agricultural land and equally as much entitled to compensation, (e). When land is compulsorily acquired under the L. A. Act the tenants from year to year in respect of such land are entitled to have their share of the compensation apportioned at the rate of one anna in the rupee, (f).

Apportionment between landlord and tenant-at-will :—The Court below in concurrence with the Collector had not awarded any compensation to the sub-tenants on the ground that their tenancies were of so precarious a nature that they could not be deemed to have any market-value. It was found in evidence that they were tenant-at-will having no transferable interest in the land but prices were paid by the purchasers who thereupon approached the landlord and got his consent to the sale. It was held that the sub-tenants had an interest in the land which had a market-value inasmuch as such sales were common because purchasers were able in usual course to secure recognition from the landlord, (g).

What the landlord has to prove in case the land acquired is claimed lakheraj or rent-free :—When the question of title to a plot of land arose between claimants to compensation money paid by Government on acquisition thereof under the Land Acquisition Act, on being the purchaser of the estate at a sale for arrears of land revenue, whilst the other was holding it as lakheraj, it was held that former was in the position of the plaintiff and the burden of proof was on him, (h). A purchaser of an entire estate sold for arrears of revenue seeking to recover land claimed by the defendant as lakheraj must prove a *prima facie* case that his mal land has, since 1790 been converted into lakheraj. The fact that the lands are within the ambit of the estate is not sufficient to meet this burden, (i).

In (j), the plaintiff sued for the recovery of certain land which he alleged was the mal land of the zemindar of which he has taken settlement from the patnidar and from which he had been dispossessed. The defence was that the land in suit was lakheraj land. It was held that in (k), what the Judicial

(e) *Narain Chandra Boral v. Secretary of State*, 28 Cal. 152 : 5 C. W. N. 349.

(f) *Punniah Nadan v. Deipanal Ammal*, 36 M. L. J. 463 : 9 L. W. 453 : 26 M. L. T. 311 : 52 I. C. 247 (258).

(g) *Girish Ch. Roy Choudhury v. The Secretary of State*, 24 C. W. N. 184 : 31 C. L. J. 63 ; *Secretary of State v. Bejoy Kumar Addy*, 30 C. L. J. 303.

(h) *Harihar Mookherjee v. Madhab Chandra Babu*, 14 M. I. A. 152.

(i) *Krishna Kalyani v. Braunfield*, 20 C. W. N. 1028 : 36 I. C. 194.

(j) *Makhan Lal Parel v. Rup Chand Maji*, 33 C. W. N. 1168 : 51 C. L. J. 41.

(k) *Jagdeo Narain Singh v. Baldeo Singh*, 49 I. A. 399 : 27 C. W. N. 925.

Committee had held was that the zaminder must prove that the land lies within his regularly assessed estate or mahal and that it is not sufficient to show merely that it lay within the ambit of his zemindary. It must be shown that it formed part of the mal assets at the time of the decennial settlement ; that it is not therefore sufficient to shift the onus of proof to show that the land lies within the ambit of the zemindary. To shift the onus of proof it must be shown that the land formed part of the mal assets at the time of the decennial settlement.

Apportionment between lessor and lessee :—It is only common sense that as between lessor and lessee the acquisition should not place either party in a better or worse position than he has before the acquisition. The acquisition transfers the property into a certain sum of money, but the rights of the parties relatively to this sum ought to be the same as they were with reference to the property. Where a property is subject to a lease, theoretically speaking, the total compensation for the property should be the sum total of the compensation payable in respect of the interests of the lessor and lessee, the amount should be divided between them in such proportions as would represent the value of their respective interests. It must follow on this basis that whatever is obtained by one party, the other takes the balance, and this ensures to each payment of the proportionate value of the interest. In an apportionment between lessor and lessee, it ought not surely to make a difference whether the lessor's or the lessee's interest is first valued and paid for, (1). The difference between a freehold piece of land and a piece of land leased for 999 years at a nominal rent with no restricting covenants would be purely sentimental. But where there are restrictive covenants as time passes and the land changes hands it becomes difficult to enforce the covenants between freeholder, but it is not difficult to enforce covenants against lessees. Covenants are more detrimental in the case of leaseholds than in the case of freeholds, (m).

Valuation of the tenancy and Art. 133 (1) (a) of the Constitution :—In connection with an application for leave to appeal to the Supreme Court preferred by the landlord against a decree of partial eviction of the tenant, question arose as to what should be the valuation of the subject matter in dispute i. e., the tenancy that bears a rental of Rs. 240/- per month. The property on the above finding would be of the value of Rs. 1,00,000/-. It was held in *Pandit Sri Lakshmi Kanta Jha v. Nilkanta Ghosal* (m-1) that, that however would not by itself be sufficient for answering the requisite test of valuation. From that however is to be deducted the value of landlords' interest or reversion for the purpose of determining the value of the tenancy in dispute. Now, taking the capitalised value of the landlord's reversion at the reasonable figure of 20 years' purchase it would come near about Rs. 58,000/-, and deducting the same from the

(1) *Surendra Nath Sarkar v. Pyari Charan Law*, 67 C. L. J. 532 : 42 C. W. N. 1191 : 1938 A. I. R. (C) 740.

(m) *Government of Bombay v. Century Spinning and Manufacturing Company*, I. L. R. (1942) Bom. 403 : 44 Bom. L. R. 57 : 200 I. C. 661.

(m-1) *Pandit Sir Lakshmi Kanta Jha v. Nilkanta Ghosal*, 75 C. W. N. 1004 (D. B.)

value of the property, as stated above, namely Rs. 100,000/- which would be Rs. 42,000/- which would be the value of the tenancy and much more than the appealable value, namely Rs. 20,000/- under Art (433) (1) of the Constitution. The decision in *Ramric Lal Saha v. Sachindra Nath Ray* (m-2) is distinguishable, as there the tenant's interest could not be valued for want of materials.

Apportionment between lessor and lessee whose lease has expired or is about to expire :—A lease under which certain property which was acquired under the L. A. Act, contained the following clause : "That if the lessee shall be desirous of taking a renewed lease of the said land for further term of thirty years from the expiration of the said term hereby granted and on such desire shall prior to the expiration of such last mentioned term, give to the lessor three calendar months' previous notice in writing and shall pay the rent hereby reserved and perform the several covenants and conditions herein contained and on the part of the lessee to be observed and performed upto the expiration of the said term hereby granted, the lessor will upon the request and at the expense of the lessee and upon his signing and delivering to the lessor a counter-part thereof, sign and deliver to the lessee a renewed lease of the said piece of land for a further term of thirty years at a rent to be fixed by the lessor but which shall not be less than the highest rate at which land revenue is assessed on lands in the neighbourhood and under and subject to similar covenants and provisions or such of them as shall be then subsisting or capable of taking effect." It was held that the right under the above said clause to have the lease renewed on its expiration, was, too hypothetical to be of any commercial value, (n).

A declaration was made under the L. A. Act for the acquisition of certain premises for the Calcutta Improvement Trust. The respondent company were the lessees of the premises under the owner and at the time when notices were issued by the Collector for filing claims they were on the premises although their lease had expired and landlord had served a notice on them to quit and instituted a suit for ejectment against them. The respondent company on being served with notice filed their claim. They subsequently vacated the premises to avoid litigation with the lessor. A small part of the premises was ultimately acquired and what was left untouched was almost equal in area to the new premises to which the company removed. It appeared that the respondent company when they left the premises knew that only a portion would be acquired. It was held that the respondent company was not entitled to receive any compensation, (o). Where land compulsorily acquired is occupied by tenants, whose tenancies are determined by notice or efflux of time, they cannot ordinarily claim compensation for loss of profits, even though they may have

(m-2) *Ramric Lal Saha v. Sachindra Nath Ray*, A. J. R. 1968 Cal. 316.

(n) *W. F. Noyce v. Collector of Rangoon*, 6 Bur. L. J. 91 : 104 I. C. 373 : 1927 A. I. R. (Rang.) 246.

(o) *Secretary of State v. Breakwell & Co.*, 55 Cal. 957 : 32 C. W. N. 556 : 109 I. C. 315 : 1928 A. I. R. (Cal.) 761.

reasonable expectation of continuing in possession or having the lease renewed, (p).

Covenant for apportionment between landlord and tenant :—A covenant in a lease that upon acquisition of the premises under the Land Acquisition Act the whole of the compensation for the land should go to the landlord alone, is valid in law and enforceable. Such a covenant is not illegal or contrary to public policy even if the leasehold interest is transferable and the rent is fixed in perpetuity, (q).

In (r), the District Judge held, that under a particular clause in the darpatni patta, darpatnidar was disentitled to any compensation. That clause ran as follows :—"If any land belonging to the estate is taken up for roads, or at the necessity of Government and in case of your having an abatement in the rent of the said land in the patni dowl jama from the zeminder, you shall have to allow me too a reduction accordingly. I have no concern with the price." Garth C. J., in delivering the judgment held that the darpatnidar is not disentitled to receive compensation by this clause in the patta, because in this instance the condition has not happened which would disentitle him. He observed "as we read the clause, it only provides that in the event of the Government taking the land *and also in the event of an abatement of rent being made by the zaminder to the patnidar*, then the patnidar agrees to be content with a corresponding abatement from the rent which he pays to the patnidar and in that case he relinquishes his claim to the Government compensation. But this relinquishment is to depend upon the two events, the taking of the land by Government, and the abatement being in the patnidar's rent. No abatement has been made in this instance in the patnidar's rent ; and consequently the condition upon which alone the clause was to take effect has not happened."

In a suit for rent by a zaminder against a patnidar the latter claimed abatement of rent on the ground that part of the land included in the patni tenure had been acquired by the Government for public purpose. The kabuliati executed by the patnidar contained provisions to the effect that if any of the land settled should be taken up by the Government for public purposes, the zaminder and the patnidar should divide and take in equal shares the compensation money and a further provision to the effect that the patnidar should make an objection on the score of diluvion or any other cause to pay rent fixed or reserved by the kabuliati." It was held that the patnidar entitled to abatement. Field, J., in delivering the judgment observed : "I take it, therefore, that this stipulation that the parties should divide the compensation money in equal moieties is an agreement between them merely as to the apportionment of compensation ; and that it was not intended to lay down any rule between these parties as to abatement

(p) *Rex v. The Liverpool and Manchester Railway Coy.*, (1836) 4 Ad. & E. 650 ; *Dist. Deputy Collector, Panch Mahals v. Monsangji, Mokhamsangi Naik*, 30 Bom. L. R. 930.

(q) *In re Morgan and London and North Western Railway Company*, (1896) 2 Q. B. 469 ; *Gadadhar Bhatta v. Lalit Kumar Chatterjee*, 10 C. L. J. 476,

(r) *Gadadhar Dass v. Dhunput Singh*, 7 C. 585.

of rent which must be taken to be left to the general law of the country, and I think that as the patnidar has suffered a diminution of the area of the thing demised to him he is entitled to abatement of patni rent payable by him," (s).

In (t), the respondents held the land acquired under a grant made in their favour on the 1st February, 1861 by the Collector. The settlement was permanent, but under a clause in the deed it was stipulated that if any portion or whole of this land was required for the Government they, *i. e.*, the tenants, should give up the same without any compensation. The land was acquired for the Corporation at its expense. The Government as landlord did not resume the land during a period of fifty three years. It was held that the compensation awarded to the Government landlord, namely the capitalised value of the revenue and one-eighth of the amount awarded as compensation was *prima facie* fair. A stipulation by the tenant that "If the municipality or the Government acquires the said land (*i. e.*, the land of the tenancy) at any time for any purpose then you (the landlord) shall get the compensation awarded therefor ; I shall not have any concern therewith" is binding on the tenant whether the tenancy is governed by the Transfer of Property Act or by the Bengal Tenancy Act and such a stipulation was still binding on the tenant even if the tenancy has expired and the tenant was holding over, (u). The High Court held "the stipulation is in clear terms and it says that the tenant will forego his right to compensation if embankment or bridge or channel or road etc., are constructed by the Government on the land of the jama, must be strictly construed. The stipulation is restricted to a construction by the Government alone and not by any other company or Society." In appeal against the said judgment it was held by the Privy Council that the words "constructed by Government" mean constructed by reason of the action of the Government action, *i. e.*, in acquiring the land compulsorily for the purpose of enabling the construction to be carried out and do cover a case as the present one in which this was done by the Corporation of Calcutta, (v).

Apportionment when there is a muchilika :—A raiyat in occupation of "raiya land" on the date the Estates Land Act came into operation can also claim compensation in respect of the occupancy right conferred upon him by sec. 6 (1) of the Act when the land is acquired by Government under the L. A. Act. A muchilika executed by a tenant prior to Madras Estates Land Act, relinquishing his claim for compensation does not estop him from making the claim in view of the right conferred upon him by the Estates Land Act. Where there are distinct interests in the land, compensation awarded must be for both and not in respect of one alone, (w).

(s) *Uma Sunker v. Tarini Chunder Singh*, 9 C. 571.

(t) *Secretary of State v. Bejoy Kumar Addy*, 40 C. L. J. 303 : 84 I. C. 732 : (1925), A. I. R. (C) 224.

(u) *Radhanath Maity v. Krishna Chandra Mukherji*, 40 C. W. N. 722 : *Hem Chandra Naskar v. Rai Harendra Lal Rai Bahadur Estate Ltd.*, 49 C. W. N. 634.

(v) *Rai Harendra Lal Rai Bahadur Estate Ltd., v. Hem Chandra Naskar*, 53 C. W. N. 803 (P. C.)

(w) *Hotha Virabhadrayya v. Revenue Divisional Law Officer*, 29 I. C. 8.

Apportionment between landlord and licensee :—Plaintiff, a perpetual lessee of a village, claimed from the defendant, a tenant, the entire compensation received by the latter under the L. A. Act in respect of a house-site in the *abadi* of the village. The village *wajib-ul-arz* declared the right of the defendant to occupy the site as long as he pleased, but also declared the right of the plaintiff to resume the site of the house after the occupant left the village, the latter having right to transfer the materials of the house. *It was held that, the defendant had no interest in the land but was a mere licensee to occupy it and that he was not therefore entitled to any portion of the compensation money awarded for the acquisition of the site under the L. A. Act, (x).*

Apportionment between Government and tenants under it :—In assessing the amount of compensation due to the landlord, regard must be had to the question of how much the landlord is actually realising from the land. The Government in its capacity as landlord is entitled as usual to a capitalisation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken, together with 15 per cent. for compulsory acquisition, and something more in respect of the possibility of enhancement of the value of the land thereafter. The Government is entitled in law to a higher proportion either by consent of parties or otherwise, (y).

It should be noted that in a proceeding under the L. A. Act it is competent to the Court to adjudicate on any question of title to the land acquired, or to apportion the amount of compensation for it as between the claimant and the Government, (z). Under the L. A. Act what is acquired is the land which includes all that is stated in cl. (a) sec. 3 of the L. A. Act. But in the case of any land in which either the Government have an admitted interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government, it is open to Government to acquire the property under the Act. When it comes to a question of determining the market-value of the property acquired and the sum payable as compensation for the property acquired to the person having a limited interest in the property it is open to the Court to determine what sum is really payable to the limited owner. The question of title in such proceedings is really incidental to the question of the determination of the market-value of the interest of the claimant in the land acquired, (a).

In (b), land of a toka tenure situate at a hill on the north of Bombay was compulsorily acquired by the Government. The annual rent payable to the Government was Rs. 18-5-5 p. But the Government had a right to increase the assessment in the year 1929-30 at the rate of 4 per cent on the value of the land. It was held that in valuing the interest of Government in the land, the assessment on the land could not be expected to increase in 1929-30 to a higher rate than 2 per cent and the same should be capitalised

(x) *Shankar Govind v. Kissan*, 45 I. C. 554.

(y) *Manmohan Dutt v. The Collector, Chittagong*, 40 Cal. 64.

(z) *Government of Bombay v. Esufali Salebhoy*, 34 Bom. 618.

(a) *Mongal Das Girdhardas Parekh v. Assistant Collector, Prantijprant*, 45 Bom. 277.

(b) *Government of Bombay v. N. H. Moss*, 47 Bom. 218.

at 6 per cent and written back at the same rate to the date of acquisition. A method which has been generally used to arrive at the present value of rent is to capitalise at a certain rate and then write it back to the date of acquisition the rate of capitalisation and the rate of writing back being the same.

Apportionment of compensation for Noabad Mahal :—A Noabad Mahal held under Government implies a hereditary and transferable title and perpetuity subject to payment of rent for all lands under cultivation. Where certain properties included in a Noabad Mahal held under the Government were acquired under the L. A. Act it was held that the mere fact that the rent was enhancible did not justify the Court in awarding half the compensation money to Government as Government would not in ordinary course increase the assessment unless the assets of the property also increase ; and that the interest of the Government ought to be measured by capitalising the present rent at 30 year's purchase, (c).

Apportionment of compensation for Cantonment land :—It is not a necessary implication from the Bengal Cantonment Rules, 1836, that all land within a cantonment in Bengal is Government property but long possession by a private person is not by itself sufficient to establish his title to land so situate. In 1917, the Government acquired under the L. A. Act, a plot of land with a house in the Barrackpore Cantonment. The respondent had a possessory title to the land from 1900 or possibly from 1871. The land which was not shown to be *lakheraj*, had not been assessed to revenue, nor had it been registered as private property under sections 38 to 41 of the Bengal Land Registration Act, 1876. An entry in 1853 in the *mouzawari* register referred to the land as a *Mahal Khas Sarkar*. It was held that the respondent though entitled to the compensation awarded in respect of the house, was not entitled to compensation awarded for the land, as he had not established his title thereto. The entry in the *mouzawari* register, although no proof of title in the Government, was of considerable significance in the absence of other records, (d). Certain building belonging to the appellants were taken compulsorily under Government notification. The Collector assessed the compensation in respect of the building only, on the basis of the cost of new building of the same character at military Engineers service rates. This was upheld by the District Judge. It was found that the land on which the buildings stood was not the property of the appellants and that their only interest in the land was that given to them by the Cantonment authority under the Cantonment Regulations, a license to hold the land subject to one month's notice to quit with the right to receive as compensation the value of the building. It was held that as the appellants were licencees liable to be ejected at any time, the measure of their interest was the amount of compensation that they could claim if their license were determined

(c) *Jogesh Ch. Roy v. Secretary of State*, 18 C. W. N. 531.

(d) *Secretary of State v. Satish Chandra Sen*, 58 Cal. 858 (P. C.) : 35 C. W. N. 173 ; 53 C. L. J. 1 : 1931 A. L. J. 249 : 33 Bom. L. R. 175 : 60 M. L. J. 142 : 33 L. W. 41 : 130 I. C. 616 : 1931 A. I. R. (P. C.) 1.

and that amount was fixed by the regulations at the value of their buildings, (e).

Apportionment of compensation for minerals :—In a case under the L. A. Act the zamindars whose land had been acquired claimed compensation in respect of the kankar extracted from the soil. In the agreement entered into by the zamindars with the Government at the time of the settlement it was admitted by them that the Government reserved to itself all rights in minerals. It was held that kankar came within the definition of a mineral and that, as evidenced by the settlement agreement and the fact that kankar was not taken into account in fixing the revenue, the zamindars had no rights in the kankar which belonged to the Government, and were not entitled to claim compensation in respect thereof. In the provinces of Agra and Oudh, since their acquisition by the Government, the land revenue fixed at settlements has been based on the agricultural value of the land and without taking into account the value of any minerals which might exist in the land ; and no rights of the zamindars have been recognised in stone quarries or any other minerals. Rights in minerals were reserved for the Government and accordingly, as between the zamindars and the Government, the kankar in the province of Agra is the property of the Government, (f).

Apportionment of compensation for Bhogra land :—Government is a person interested within the meaning of sec. 14 in the amount of compensation paid for *Bhogra* land of a *gountia* and is entitled to a share of the compensation. The ideal method of apportionment would be to treat the *gountia* and the Government as nominally co-proprietors, and divide the compensation amount in proportion to their shares in the assets of the village. In the case of the Government the total raiyati rents plus the *zabti* or minus the *puraskar* would represent the assets while in the case of *gountia* the assets would be the nominal rental value of the rent-free *bhogras* plus the *puraskar* or minus the *zabti*. But this method involves factors which, if not known, are certainly difficult for ascertainment. The simple method, however, is to adopt the proportion of one-fourth as the *gountia's* share and three-fourths as the Government's share, this being the statutory proportion in which they divide the raiyati rents, (g).

Apportionment of compensation for Inam land :—Under the L. A. Act the amount of compensation is to be divided in proportion to the value of interests of all persons interested in the land. But the question of apportionment of the sum awarded between the several interests must not be based on hypothetical grounds. Any remote interest should not be taken into consideration. In the case of an *inam* village granted under a sanad providing that the inam should continue in family so long as there may be in existence descendants of the original grantee in male-line, it cannot be

(e) *S. C. Dharjibhey v. Secretary of State*, 164 I. C. 408 : 38 P. L. R. 1071 : 1936 A. I. R. (L) 1010 ; *Sardar Sujan Singh v. Secretary of State*, 1937 A. I. R. (Pesh) 217.

(f) *Khushal Singh v. Secretary of State*, 53 All. 658 : 1931 A. L. J. 660 : 133 I. C. 611 : 1931 A. I. R. (All.) 394.

(g) *Secy. of State v. Bodhrum Dobey*, 128 I. C. 344 : 1931 A. I. R. (Pat.) 131.

said that the grantor Government has any interest which is saleable and of which the law can take note and which could be made the basis of an apportionment of compensation on compulsory acquisition of the inam village. The interest of the Government is at best a remote contingent interest, the chance of the *inam* coming to an end by failure of the male line. Such an interest or chance can scarcely be appreciable by a money value or money payment. The *inamdār* is therefore entitled to the whole of compensation money without deduction, (h).

Apportionment between mortgagor and mortgagee :—In (i), land was taken up by Government under Act X of 1870 and public notice was given thereof and notification was made that "claims to compensation of all interests in such land may be made to the Collector." It was held that it was open to the mortgagee decree-holders to put in a claim under sec. 9 of Act X of 1870. Having failed to do so they are not entitled by force of a decree prepared under section 88 of the Transfer of Property Act to attach the amount of compensation which has been awarded by the Collector to the mortgagor. They might proceed against the remainder of the property which was not taken up and if the proceeds of the sale of that property proved insufficient to discharge the amount due under the decree, they might apply to the court under section 90 for a decree for the balance.

The above principle was sought to be applied in (j), where Their Lordships held : "in our opinion when the property covered by the mortgage was under the L. A. proceeding converted into money, the lien which was attached to the property was transferred to that which then represented the property *viz.*, the compensation standing to the credit of the mortgagor in the collectorate and we can see no reason why the mortgagee in satisfaction of his decree should not be allowed to take out execution against the money in the collectorate. *The obvious object of section 88 of the Transfer of Property Act is to secure the mortgage-debt by transferring the mortgaged property into money and the mere fact that the mortgaged property has been changed into money by some authority other than the Court, would not disentitle the mortgagee from recovering the amount of his debt out of that money or compel him in order to obtain satisfaction of his debt to obtain a further decree under section 90 of the Transfer of Property Act. Our attention has been drawn to *Basa Mal v. Tajammal Hussain*, (i) *ibid.* in which Mr. Justice Aikman held that in a case similar to the one before us the proper remedy for the decree-holder was to apply under section 90 of Act X of 1870 to the Collector in order to obtain satisfaction of his decree out of the compensation money. *We are unable to agree with that decision.* In our opinion a decree-holder is entitled to obtain through the Court which granted him the decree, satisfaction of that decree out of the money awarded as compensation on the acquisition of the

(h) *Mahadev Balkrishna v. Dt. Deputy Collector, Poona*, 40 Bom. L. R. 432 : 176 I. C. 642 : 1938 A. I. R. (B) 325.

(i) *Basa Mal v. Tajammal Hussain*, 16 All. 78.

(j) *Jotoni Choudhurani v. Amar Krishna Shah*, 13 C. W. N. 350 : 6 C. L. J. 745 : 1, I. C. 164.

mortgaged property by Government, that money representing, so far as he is concerned, the property which was hypothecated to him as security for the mortgage-debt."

The same view has been adopted in (k), where the property acquired for a public purpose under the L. A. Act formed part of an estate which was mortgaged for an amount larger than the amount awarded as compensation. The mortgagee was held entitled to the whole of the compensation in liquidation of the mortgage-debt.

In (l), it has, however, been held, that a sale of property under the L. A. Act operates to effect "destruction of the mortgaged property within the meaning of section 68 of the Transfer of Property Act and after that, the mortgagee's remedy is only to require the mortgagor to give him within a reasonable time another sufficient security for the debt, and on his failure to furnish such security, to sue mortgagor for the mortgage money. There is no authority in the Transfer of Property Act for the proposition that where a mortgaged property is acquired under the L. A. Act the mortgagee has a charge on the purchase-money.

To remove the above conflict of judicial opinion and to establish a uniform rule, sec. 73 of the T. P. Act, 1882 has been remodelled by Act XX of 1929 with the addition of sub-section (2) and (3) which run as follows : "(2) where the mortgaged property or any part thereof or any interest therein is acquired under the L. A. Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part out of the amount due to the mortgagor as compensation. (3) Such claims shall prevail against all other claims except those of prior encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage has not become due."

Interest ceases to run upon mortgage when lands acquired before the date :—In (m), on the 28th September, 1912, the appellant advanced Rs. 5000 to the respondent on mortgage of four properties. The mortgage money was payable on the 28th September, 1913 and carried interest at 12 per cent per annum. One of the properties given by way of security was the subject-matter of a proceeding under the L. A. Act. The declaration for the acquisition of the land had been published on 2nd Feb. 1912 and the award of the Collector made on the 20th September, 1912. On the 11th October, 1912 the mortgagee applied to the L. A. Judge that the money due under his mortgage namely Rs. 5000 as principal and Rs. 600 as interest thereon for one year might be paid to him out of the compensation money. The mortgagee in substance wanted a return of the mortgage money together with interest for the full period of 1 year. The mortgagor did not contest the claim for the principal amount but urged that she was not liable to pay interest for one year. On behalf of the appellant it was contended that under the mortgage contract he was entitled to interest for one year and that the

(k) *Tapan Dass v. Jaso Ram*, 17 P. R. 1907 : 2 P. L. R. 1908.

(l) *Sajadi Begum v. Janki*, 42 I. C. 793.

(m) *Prokash Chandra Ghose v. Hassan Banu Bibi*, 42 Cal. 1146 : 19 C. W. N. 389.

mortgagor was bound to pay that sum even though the mortgage-money was repaid on an earlier date. The L. A. Judge held that the mortgagee was entitled to interest only for 1 month.

The High Court observed : "The appellants have relied on the case of *Bakhtawar Begam v. Hussain Khanum*, (n). That case, however, is an authority only for the proposition that, ordinarily and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. This principle is of no assistance to the appellant. It need not be disputed that the mortgagor is not entitled to redeem before the debt becomes due. But in the present case the contract between the parties could not be performed according to its letter by reason of the circumstances beyond the control of the parties. The question consequently arises whether he was entitled to the interest for the whole of the term. It is well settled that if the mortgagee makes a demand for payment within the term and the mortgagor complies, the mortgagee cannot insist on the payment of interest for the whole of the term. Reference may be made to the cases of, (o). In the present case the mortgagee might have called upon the mortgagor under section 68 of the Transfer of Property Act to give additional security. He did not adopt the course and claimed refund of the money, to which the mortgagor consented. Under these circumstances it is plain that the mortgagor was not bound to pay interest beyond one month. Reliance was placed upon the provisions of sections 108 and 114 of the Lands Clauses Act of 1845, relating to the acquisition of mortgaged properties. It is sufficient to observe that the Indian Legislature has not framed similar provisions applicable to this country."

Apportionment between persons claiming adverse possession :—The court in a L. A. case can go into the question of title for the purpose of determining which of the contending parties is entitled to the compensation. It is not bound to award compensation to the ostensible owner in possession at the time of acquisition, (p). It is the cardinal principle of law that the party in possession is *prima facie* entitled to the money which was paid for the acquisition of the land until some one else showed that he had a prior claim. As between private owners contesting *inter se* the title to the land, the law has established a limitation of 12 years ; after that time it declares not simply that the remedy is barred, but that the title is extinct in favour of the possessor, (q). On the acquisition of a piece of land under the L. A. Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession without payment of rent for more than 12 years. He asserted that he held the land under another person and not under the rival claimant who was the

(n) *Bakhtawar Begum v. Hussain Khanum*, 36 All. 195 (P. C.).

(o) *Letts v. Hutchins*, L. R. 13 Eq. 176 ; *In Re Moss*, (1885) 31 Ch. D. 19. *Smith v. Smith* (1891) 3 Cl. 500.

(p) *Krishna Kalyani v. A. Braunfield*, 20 C. W. N. 1028 : 28 I. C. 184 ; *Chandee Charan v. Bidoo Budden*, 10 W. R. 48.

(q) *Ganga Gobind Mondal v. The Collector, 24-Parganas*, 7 W. R. (P. C.) 21 ; *Biswanath v. Brojo Mohon*, 10 W. R. 61.

reversionary heir of the last male owner. It was held that the person in such possession was entitled to the full compensation for compulsory acquisition, having acquired the right to hold the land rent-free by 12 years adverse possession, (r). But before the trespasser's possession ripens into title such possession cannot be considered as an interest entitled to be compensated, (s).

Estoppel of a tenant :—A certain land situated in a touzi and in possession of a tenant was acquired under the L. A. Act. It was found that there was a survey by Government of the land in question and at that time the officers of the zaminder were present. The register that was prepared after the survey recorded the entire land as being in the proprietary possession of the tenant's mother, the executrix of the will of the tenant's father. There was no evidence that from that time, if not from before, the zaminder's people ever asked for or were paid any rent. The lower Court taking the view that it was an assertion by the tenant of a hostile title to the knowledge of the zaminder, held that the latter's title was extinguished when the land was acquired more than twelve years after the survey. It appeared also that five or six years before the acquisition the land which was tank was filled up by the tenant. It was held by the High Court that if land is in possession of a tenant of the owner it is the owner's possession. The tenant as long as he remains a tenant cannot be held to be in possession of his property adversely to the true owner so as to bar his title by the statute of limitation. A person who was a tenant can only be said to have held adversely to the owner of the property when his character as tenant ceased and he becomes a trespasser on the land. The character of a tenant as a tenant ceases only when the tenancy is determined and not before. A tenancy cannot be determined by a mere disclaimer by the tenant that he holds the property as his own even if it be to the knowledge of the landlord, if the landlord does not take any advantage of the disclaimer so as to be entitled to take possession of the land : that the interest of the zaminder subsisted at the time of the acquisition and he was entitled to compensation according to the value of the land as it was before the tank was filled up, (r).

Apportionment by Court is not an award but a decree :—The decision of a L. A. Court, whatever may be its nature, whether passed on a reference under section 18 or under sections 30 and 32 of the L. A. Act, whether the dispute was between the Government and the party interested or only between the parties interested *inter se*, was held in, (u), to be an award. In (v), it was held that the term award includes an order for apportionment under section 30.

(r) *Rajbans Sahaya v. Ray Mahabir Prosad*, 20 C. W. N. 828 ; 1 Pat. L. J. 258 : 37 I. C. 464.

(s) *Tulsiram v. Pande*, A. I. R. 1956 Nag. 11 : I. L. R. (1955) Nag. 842 : 1956 Nag. L. J. 73.

(t) *Bejoy Chand Mahatap v. Gurupada Halder*, 32 C. W. N. 720 : 117 I. C. 842.

(u) *Mulambath-kumhammad v. Acharat Parakat*, 31 M. L. J. 827 : 5 L. W. 472 : 38 I. C. 373.

(v) *Balaram Bhramavatar Ray v. Sham Sundar Narendra*, 23 Cal. 526.

The Judicial Committee, on the other hand, in (w), observed - "It is true that in the case of *Sreemutty Trinayani Dassi v. Krishna Lal Dey* (x), following the earlier case *Balaram Bhramavatar Ray v. Sham Sunder Narendra* (y), it was decided that an order under section 32 may appropriately be deemed as an integral part of the award made by the Court, but *Their Lordships regard this as a misapprehension as to the meaning of the award*. The award as constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under section 31 (2) the functions of the award have ceased ; and all that is left is a dispute between interested people as to the extent of their interests. Such dispute forms no part of the award, and it would, indeed be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal which would be wholly taken away when the piece of land was represented by a sum of money paid into court."

After the decision of the Privy Council, in *Ramachandra Rao v. Ramachandra Rao* (w), overruling the cases of *Trinayani Dassi v. Krishna Lal Dey* (x), and *Balaram Bhramavatar Roy v. Sham Sunder Narendra* (y), it is futile to contend that the order of apportionment of compensation between rival claimants in a L. A. case is an award or part of an award and appeal lies from an order of apportionment under section 54 because it is an award or part of an award.

The question again arose for consideration in (z), where Ramesam, J., in discussing the question held that "a decision on a reference under section 30 was regarded as a decree and not as an award as then understood, and it attracted all the usual consequence of an appeal. The view taken there (*i. e.*, in *Ramachandra Rao v. Ramachandra Rao* supra) was that it was a decree governed by the Civil P. C. and the Civil Courts Act. This was the view taken also in (a). Venkatasubba Rao, J., in the same case held "that whereas Part III of the Act uses the word 'award' to describe the adjudication of a Court. Section 30 and similar sections carefully abstain from the use of the term." (b). So the position is that a decision under Sn. 30 is regarded as a 'Decree' and as such there is a right of appeal.

The decision in Madras Full Bench Case (c), is no longer good law in

(w) *Ramachandra Rao v. Ramachandra Rao*, 45 Mad. 320 : 26 C. W. N. 713 : 35 C. L. J. 545 (P. C.).

(x) *Sreemutty Trinayani Dassi v. Krishna Lal Dey*, 39 Cal. 906 : 17 C. W. N. 935 n.

(y) *Balaram Bhramavatar Ray v. Sham Sunder Narendra*, 23 Cal. 526.

(z) *Venkata Reddi v. Adinarayan*, 52 M. 142 : (1929) A. I. R. (M) 351.

(a) *Mahalinga Kudumban v. Theetharappa Mudaliar*, 29 M. L. W. 237 : (1929) M. W. N. 62 : (1929) A. I. R. 223.

(b) *Raghunath Das Harjivandas v. Dist. Supdt. of Police, Nasik*, A. I. R. 1938 Bom. 187. *Hanumanthappa and another v. Korisetty Sivalingappa*, A. I. R. 1960 Mys. 139.

(c) *Rajagopala Chettiar v. H. R E. Board, Madras*, A. I. R. 1934 M. 103. 57 M. 271.

view of Privy Council decision in, (d), and also later Full Bench of same High Court, (e).

Appeal lies against order of apportionment :—The decision in reference under sec. 30 is not an award within the meaning of sec. 54, and hence no appeal would lie against it under that section. Decision in reference under sec. 30 being one on rights of contending parties, is a decree within sec. 2(2), and is appealable under sec. 96 C. P. C., (f). Though the order determining the apportionment of the compensation is not an award within the meaning of sec. 54, it is certainly a decree or of the nature of a decree and an appeal lies against it, (g).

Forum of appeal :—In (h), some lands were acquired under the L. A. Act and the L. A. Officer passed an award and referred to the civil court under section 30 the claims of the contending parties. One of the questions for decision that arose in the case was to what court should an appeal against the decision of the Subordinate Judge in the matter lie. The Court in delivering the judgment held : "sec. 54 L. A. Act of 1894 provides for an appeal to High Court from the award or any part of the award of the Court in any proceeding under this Act. A decision in a reference under s. 30 is not an award within the meaning of s. 54. The decision of a court as to rights of the contending parties on a reference under s. 30 can not be said to be an award under the Act. In, (i). Their Lordships of the Privy Council observed : 'from the moment when the sum has been deposited in court under section 31 sub-section (2), the functions of the award have ceased and all that is left is a dispute between interested people as to the extent of their interests. Such dispute forms no part of the award, and it would indeed be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal which would be wholly taken away where the piece of land was represented by a sum of money paid into Court.' The amount involved in the present appeals is less than Rs. 3000 and an appeal therefore under the Madras Civil Courts Act lies to the District Court as the amount does not exceed Rs. 5000. If the appeal is against the award, *i. e.*, against the amount of the award, no doubt an appeal would lie to the High Court. But it is only an appeal against an order determining the civil rights of two sets of contending parties. As the order of the Subordinate Judge is a decree in civil proceedings the appeal must lie to the District Judge as the amount involved is less than Rs. 5000". Following the above case it was decided in (j), that the decision of the court of a Subordinate Judge upon a reference made to it under section

(d) *Mt. Bhagwati v. Mt. Ramkali*, A. I. R. 1939 P. C. 133.

(e) *Chickana Chettiyar v. V. S. Parumal Chettiar*, A. I. R. 1940 Mad. 474 (F. B.).

(f) *Mahalinga Kudumban v. Theetharappa Mudaliar*, 29 M. L. W. 237 : (1929) M. W. N. 62 : (1929) A. I. R. (M) 223.

(g) *Raghunath Das Harjivandas v. Superintendent of Police, Nasik*, 57 Bom. 314 : 35 L. R. 276 : 144 I. C. 710 : 1933 A. I. R. (Bom.) 187 ; *Hanumanthappa v. Korisetty Sivalingappa*, A. I. R. 1970 Mys. 139.

(h) *Mahalinga Kudumban v. Theetharappa Mudaliar*, 29 M. L. W. 237 : (1929) M. W. N. 62 : (1929) A. I. R. (M) 223.

(i) *Ramachandra Rao v. Ramachandra Rao*, 49 I. A. 129 : 45 Mad. 320.

(j) *Venkata Reddi v. Adinarayan Rao*, 52 Mad. 142 : (1929) A. I. R. (M) 351.

30 of the L. A. Act, is not an award under Part III of the Act, but is a decree, and, if the subject matter of the lis is below Rs. 5000, an appeal from the decision lies to the District Court and not to the High Court under s. 54 of the Act. It is a decree governed by the C. P. C. and the Civil Courts Act. To the same effect is the order in, (k). It was held that an order apportioning compensation among disputing claimants is not an award or part of an award within the meaning of s. 54 of the Act, but from this it does not follow that no appeal lies. When an order of apportionment is passed by the Assistant Judge in land acquisition proceedings relating to a dispute as to compensation deposited by the Collector under s. 30, and the dispute is referred by the Collector to the Court for its decision, the appeal if the subject matter of the order did not exceed Rs. 5000 lies to the District Court and not to the High Court.

Res judicata :—Upon the construction of the L. A. Act a decision of the L. A. Court if not appealable, and if there is an appeal, the decision of the appellate Court, is final and not liable to be contested by a suit, (l). In, (m), Pontefix J., in deciding question as to whether a decision under the L. A. Act (X of 1870) should be treated as *res judicata*, held : “I should be extremely reluctant to hold that any decision under the L. A. Act, should be treated as *res judicata* with respect to the title to other parts of the property belonging to persons who may come before the judge under section 39, because although a decision under section 39, with respect to the particular money then before the Court is a decision which is final with respect thereto unless appealed from and any party summoned before the judge and has not appeared is bound by such decision, I don’t think that a decision of the judge with respect to compensation money should be treated as *res judicata* affecting other parts of the claimant’s property.”

The above case was followed in, (n). An adjudication as to the right of persons claiming compensation under the L. A. Act, 1 of 1894, includes the question between the same parties in subsequent proceedings, (o). It is not competent to the civil court in the case of the same question arising between the parties to review a previous decision no longer open to appeal given by another court having jurisdiction to try the second case. This principle is of general application and is not limited by section 11 of the C. P. C., so that the fact that the decision in question was not obtained in a former suit did not make any difference, for it has been recently pointed out by the Judicial Committee in (p), that the principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of the Code in this respect, (q). A prior decision in a L. A. case, though between the same parties and in respect of adjacent land, is not

(k) *Mangatram Gangadas v. Hundomal Hassomal*, I. L. R. (1941) Kar. 133 : 195 I. C. 311 : A. I. R. 1941 (Sindh), 100.

(l) *Nilmonee Singo Deo v. Rambundhoo*, 4 C. 757.

(m) *Nobodeep Chunder v. Brojendra Lal*, 7 C. 406.

(n) *Rai Bhaia Disgoj Deo Bahadur v. Kalicharan*, 11 C. W. N. 525.

(o) *Mahadevi v. Neelamani*, 20 M. 269 ; *Chawkaram Makki v. Vyyaprath*, 29 M. 273.

(p) *Hook v. Administrator-General of Bengal*, 48 I. A. 187 : 48 C. 499 : 25 C. W. N. 915.

(q) *Ramachandra Rao v. Ramachandra Rao*, 26 C. W. N. 713 : 35 C. L. J. 545 (P.C.).

res judicata if land is acquired under different notification, (r). An award of compensation being made in favour of two co-sharers in a proportion of half and half, the first party objected to the sufficiency of the award and claimed the entire compensation money to the exclusion of the other. The second party merely objected to the sufficiency and the Collector duly made a reference. Beyond laying a claim to the whole of the compensation money the first party's application did not state any reason in support of the claim and the Collector's letter of reference did not say that any question of title was being referred. The objections were taken in respect of an award dated 21st September, 1927, but it appeared that there was a later award dated 1st November, 1927. Among the issues framed by the Judge were whether the court had jurisdiction to adjudicate the matter on the basis of the objection taken to the earlier award and that the first party was entitled to the whole of the compensation money or only a half thereof, the judge held that there was only one award, the first being explained by the second and that the first party was entitled to the whole of the compensation money. The second party then brought a suit, claiming that he was entitled to half the property and the question was whether the matter was *res judicata*, held that the matter was *res judicata*, (s).

The principle which applies in each case *i. e.*, under sections 18 and 30, is that parties to these proceedings are parties to proceedings under a special Act ; Special Tribunals have been constituted under the Act to deal with the matters for which the Act legislates, and it is in the proceedings and not by civil suits that the claims of and disputes between the parties are to be settled. Adjudications by the appropriate Tribunal under the L. A. Act are as much subject to the principles of *res judicata* as adjudications by courts under the Civil Procedure Code. Upon the acquisition of same land owned by a person daughters claimed a share in the compensation awarded. They did not accept the Collector's order as to apportionment and hence the Collector made a reference to the court. They and their assignees who were present in the court put forward their claims and the assignment by consent of the daughters to the assignees were recognised by the court. The claim of the assignees to a share in the compensation was adjudicated upon and rejected. They did not appeal from that order. It was held that the assignees of the daughters could not be said to be strangers to the proceedings under the Land Acquisition Act and hence they did not come under proviso to section 31 (2). The assignees not having appealed against the order of adjudication of their claims the order stood and the assignees had no right to bring a separate civil suit, (t).

Separate suit does not lie for apportionment :—The Court in a land acquisition case can go into the question of title for the purpose of determining which of the contending parties is entitled to the compensation, (t¹). In a reference under section 18 of the L. A. Act the District Judge valued the compensation to be given in the case. One H

(r) *Narsingdas v. Secretary of State*, (1928) A. I. R. (L) 263.

(s) *Musammat Bhagwati v. Musammat Ramkali*, 43 C. W. N. 677.

(t) *Fateh Mahomed v. Thariomal*, I. L. R. (1939) Kar. 152 : 180 I. C. 681 : A. I. R. 1939 (Sind) 66.

(t¹) *Krishna Kalyani v. R. Braunfield*, 20 C. W. N. 1028.

then applied to the District Judge for the payment of the amount to him and his application was opposed by other persons who claimed title to the property, some claiming the whole of the compensation money and others, portions of it. The District Judge's order on the application was :—"This suit be dismissed. The parties may seek redresses in the civil court." H appealed to the High Court. It was held that the order of the District Judge was without jurisdiction. He ought to have apportioned the amount of the compensation awarded as he thought fit, (u).

Whenever a question of title arises between rival claimants, it must under the terms of the L. A. Act be decided in the case and cannot be made the subject of a separate suit, (v). All questions of title arising between the rival claimants in a L. A. proceeding should be decided by the L. A. Judge in the L. A. case and should not be left to be decided by a separate suit. The court was bound to decide all points, the decision of which was necessary to enable it to pass orders as to the disposal of the money including questions arising as to who was the proper heir of the claimant who had died after the deposit of money in court, (w). No civil court has any jurisdiction to go into any question decided by the L. A. court. In a claim disposed of by the Collector in the course of L. A. proceedings under the special procedure prescribed by Act I of 1894 the Collector's order or adjudication of the rights of the owners or claimants to the property for which compensation was assessed and awarded can not be questioned otherwise than by a reference to the court under the provisions of the Act and the civil courts are not competent to re-open and determine matters disposed of in accordance with the Act in a separate suit, (x).

Where on acquisition of land under the L. A. Act a party to it was served with notice he was bound to apply for reference under sec. 18 of the same Act when he was dissatisfied with the Collector's award and he could not maintain a suit in the ordinary civil court, (y). The plaintiff who was the owner of a plot of land was not entered in the *Khewat* as such. Proceedings having been taken under the L. A. Act for the acquisition of the plot, the collector gave the notice required by section 9 (3) to the person entered in the *Khewat* as the owner of the plot but no notice was given to the plaintiff. When the award was made, however, the plaintiff filed a petition of objection that the compensation should be paid to him and not to the recorded owner of the plot and the amount of compensation was consequently put to his credit in the treasury. No notice had been given to him under section 12 (2) of the Act, and he made no application under section 18 for a reference to the court. He subsequently brought a suit for a declaration that the acquisition proceedings were null and void for want of proper notice. It was held that the suit was not maintainable and that the plaintiff should have availed himself of the procedure laid down in section 18 of the L. A. Act, (z).

(u) *Harish Chandra Chatterjee v. Bhobotaraini Debi*, 8 C. W. N. 321.

(v) *Babujan v. Secretary of State*, 4 C. L. J. 256.

(w) *Nihal Kuar v. Secretary of State*, 13 I. C. 500.

(x) *Amolok Shah v. Charan Das*, 16 P. W. R. 1913 : 17 I. C. 684.

(y) *Saibesh Chandra v. Bejoy Chand*, 26 C. W. N. 506 : 65 I. C. 711.

(z) *Secretary of State v. Quamar Ali*, 16 A. L. J. 669 : 51 I. C. 501.

A civil suit between rival claimants about apportionment of compensation awarded under the L. A. Act is maintainable where there has been no adjudication of the dispute by the Collector, nor a reference to the District Court, (a). If a person having full opportunity of getting his rights adjudicated in accordance with the machinery provided by section 18 disables himself from availing of it by accepting the compensation without any protest or if for any other reason he does not make the necessary application under section 18 he can not maintain a suit in the ordinary civil court to re-open the question by asking to recover compensation on the allegation that it was wrongly paid to other persons, (b).

Order 9 rule 13 C. P. C. applies to set aside an exparte order of apportionment :—An exparte order (that the petitioner was entitled to the amount awarded) in a reference under section 30 of the L. A. Act on the vakil for the respondent reporting no instruction and petitioner proving his claim, is a decree (and not an award against which, only an appeal lies and consequently Order 9 rule 13 C. P. C. does apply and an application for setting aside the exparte order is competent. An appeal against the rejection of the application to set aside the exparte order is competent under Order 43 rule 1 of the Civil Procedure Code as there is nothing in the L. A. Act which is inconsistent either with Order 9 rule 13 or with Order 43 rule I (d) of the Code. The exparte order is one which falls under rule 2 and not under rule 3 of Order 17 of the Code though the respondent had failed to pay day-costs ordered to be paid while granting a previous adjournment, (c).

When separate suit for apportionment lies :—On a reference to the District Judge under sec. 30 of the L. A. Act by consent of parties, the Judge passed an order for payment of compensation money to one of them after four months, if in the mean time the other party did not institute a suit to establish his right to the money. The other party did institute a suit within four months but it was withdrawn on objection as to non-joinder with leave to institute fresh suit and then the present suit was instituted in proper form. It was held that the condition of the judge's order was complied with in the institution of the first suit and that the District Judge's order was passed by consent of parties. The munsiff had jurisdiction to entertain the suit for determination of the right to money awarded as compensation under the L. A. Act, (d). A person claiming a portion of the compensation awarded by the collector in L. A. proceedings is entitled to maintain a civil suit to establish his claims where the question of apportionment of the compensation money has not been determined by the collector, (e).

(a) *Bago v. Roshan Beg*, 92 I. C. 484 : (1926) A. I. R. (L) 221.

(b) *Chhedi Ram v. Ch. Ahmad Shafi*, 9 O. W. N. 1176 : 141 I. C. 674 : 1933 A. I. R. (Oudh) 100.

(c) *Krishna Udayan v. Chinna Pillai*, 1948 M. W. N. 114 : 61 L. W. 130 : A. I. R. (1948) Mad. 416 : (1948) 1 M. L. J. 119.

(d) *Narasingha Row v. Ram Rao*, 5 M.L.J. 79 ; *Harish Chandra Chatterjee v. Bhabatarini*, 8 C. W. N. 321 ; *Bhandi Singh v. Ramadhin Ray*, 2 C. L. J. 359 ;

(e) *Chandu Lall v. Ladli Begum*, 18 P. W. R. 1919 : 49 I. C. 657 ; *Bago v. Roshan Beg*, 92 I. C. 484 : 1926 A. I. R. (L) 321.

PART V

PAYMENT

Payment of Compensation or deposit of same in Court

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18.

Provided also nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the ¹[Appropriate Government], instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

¹ These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937, and the words 'Provincial Government' were substituted by the A. O. 1950.

State Amendments

1. **Maharashtra-Vidarbha.**—The amendments made in this section by C. P. Act II of 1922 and given under Madhya Pradesh applies to Vidarbha area of Maharashtra.

2. **Madhya Pradesh.**—By *C. P. Act II of 1922, S. 293.*

[See under Part III, Chapter VIII, M. P. (3)].

3. **Jubbulpore.**—By *C. P. Act 3 of 1950.*

[See under Part III, Chapter VIII, M. P. (10)].

4. **Nagpore.**—same as Jubbulpore.

5. **Punjab.**—By *Punjab Act IV of 1922.*

[See under Part III, Chapter XII, Punjab (4)].

6. **Uttar Pradesh.**—By *U. P. Act VII of 1959, S. 376.*

Same as that given under Jubbulpore City.

Notes

This was sections 38, 39 and 40 of Act X of 1870. Sec. 38 of the old Act X of 1870 ran as follows : “When the amount of compensation has been settled under s. 14 if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.”

Sec. 39 of the old Act X of 1870 ran as follows : “When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under s. 38, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided for regular appeals in suits.”

Sec. 40 ran as follows : “Payment of the compensation shall be made by the Collector according to the award to the persons named therein, or, in the case of an appeal under section 39, according to the decision on such appeal.

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.”

Object of the section :—The Select Committee in their Report dated first February, 1893 stated : “Chapter V of the Act concerns the payment of compensation. We have added clauses to section 40 (old Act X of 1873) as amended by section 12 of the Bill, empowering, on the one hand, the Collector to deposit the amount of his award in Court, when for any reason there is no person able and willing to receive it, and on the other empowering the owner of the land, dissatisfied with the award to accept the amount under protest. To that extent it will no longer be to the advantage of the owner to protract the proceeding and run on a claim for interest ; for it, notwithstanding the express privilege given to the owner, he refuses

to take the compensation money placed at his disposal, he has no claim to interest on it."

The Select Committee in cl. 8 of their Report dated 23rd March, 1893 further remarked : "Section 31 contains the regulations as to the payment of the compensation money.. To this we have added additional sections laying down procedure of the Collector and the Judge in those cases in which the occupant of the land acquired is from any disability incompetent to alienate it, or in which the compensation money must remain in deposit till the settlement of a dispute as to title. One of the objections urged by Local Government against the present law was that excessive charges of interest accumulated against Government when owners refuse the Collector's award. The revised Bill met this objection by requiring the Collector to make immediate payment of his award, and empowering the owner to take payment of the compensation tendered, without prejudice to a protest regarding the sufficiency of it. In the case above-mentioned, however, it is only fair to the owner that the compensation money deposited by the Collector should be immediately so invested as to yield his interest till the title to it is settled. We have added a section giving formal power to the Collector with sanction of the Local Government to adjust compensation by an exchange of land, a method of settlement which has been found in some provinces useful and convenient to all parties."

When once the award as to the amount has become final, all questions as to the fixing of compensation are then at an end. The duty of the Collector in case of dispute as to the relative rights of persons together entitled to the compensation money is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be, (a). Sections 31 and 32 of the L. A. Act are intended by the Legislature to protect the interests of the reversioners when land is taken from the possession of a person who holds it only on a life-estate and a widow holding a life-estate under the customary law is within the purview of those sections, (b).

Contingencies for deposit of compensation money in Court :—On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, excepting in the following cases, viz.—(1) If they shall not consent to receive it, (2) or if there be no persons competent to alienate the land, (3) or if there be any dispute as to the title to receive the compensation or as to the apportionment of it ; and in these cases it is the duty of Collector to deposit the amount of the compensation in the court to which a reference under section 18 would be submitted.

Extent of deposit by the Collector :—It is the duty of the Government to deposit in Court the whole of the compensation money which it may be required to deposit by the Act *free from any deduction*. When a demand is made by Court officials, under Court rules for poundage fees in respect of

(a) *Ramachandra Rao v. Ramachandra Rao*, 26 C. W. N. 763 (P. C.) : 35 C. L. J. 545.

(b) *Gangi v. Santu*, 116 I. C. 335.

such deposits Government has to pay such poundage fees in addition to the compensation money. The Court has no power to direct that a portion of the compensation money deposited should be refunded to Government as representing the poundage and fees paid by it when the money is deposited in Court. As the money is compensation in respect of land acquired the Court has power only to direct payment of such money without any deduction to the person or persons interested. When land is acquired for a company, the poundage and fees which may become payable during the course of proceedings, may be recovered by Government from the company as cost of acquisition, (c). The Government is bound under the provisions of the L. A. Act to have ready in the District Court the amount awarded by the referring officer, for distribution according to the decision of the District Court. If the District Court had in a proper reference increased the amount of compensation, Government is bound to pay into Court the amount of increased compensation. (d).

When Sn. 31 no bar for reference :—Sn. 31 cannot stand in the way of reference which the Collector may like to make for determination of dispute under Sn. 30 of the Act even if such disputes are raised after the award by him, by a person who was not shown in the award as one of the persons interested, provided the Collector has not yet taken the possession of that land under Sn. 16, (e). Where there are several claimants or sharers in a single award, the mere fact that the award was a joint one in favour of all will not entitle the sharers who had not applied to take advantage of the reference made by the other or others for enhanced value.

Failure of Collector to deposit and wrong payment :—It should be noted that the third proviso to section 31 (2) comes into operation only when clause (2) to section 31 has been obeyed, that is, when the Collector deposits the amount of the compensation in the court. In (f), the District Court directed that the amount awarded by it should be paid to each party. The L. A. Collector instead of depositing in Court the amount to be apportioned, paid over to the tenants the amount awarded by him to them. Consequently for the zaminder's share of the total compensation the balance due to him was not available in Court for payment over to him. The Government's view was that the zaminder must recover it from the tenants to whom it was paid in excess and calls in aid the third proviso to section 31 (2). The Court held that this proviso has no application in the present case. It only comes into operation when section 31(2) itself has been obeyed and does not apply to a case of excess payment wrongfully made. The Government was bound under the provisions of the L. A. Act to have ready in the District Court the amount awarded by the referring officer for distribution according to the decision of the District Court. If the District Court had in a proper

(c) *Re Pestonjee Jehangir*, 37 Bom. 76 : 14 Bom. L. R. 507 : 15 I. C. 771.

(d) *Deputy Collector, Coconada v. Maharaja of Pitapur*, 50 M. L. J. 412 : (1926) M. W. N. 128 : 93 I. C. 651 : (1926) A. I. R. (M) 492.

(e) *State of Bihar v. Dr. G. H. Grant*, A. I. R. 1959 Pat. 343.
State v. Narayana Pillai, A. I. R. 1959 Kerala 136.

(f) *Deputy Collector, Coconada v. Maharaja of Pitapur*, 50 M. L. J. 412 : (1926) M. W. N. 128 : 93 I. C. 651 : (1926) A. I. R. (M) 492.

reference increased the amount of compensation Government is bound to pay into Court the amount of increased compensation. The principle is not altered when an apportionment of the compensation amount is increased, and if the referring officer had obeyed sec. 31 the necessary money would have been there. It is not right that Government should throw on a party, whose property it has compulsorily acquired, the risk and burden of recovering the compensation from some one else to whom Government has wrongfully paid it. Whether Government can by appropriate proceedings recover the excess from those to whom it was paid is for Government to consider. Collector may be held liable if negligence in paying to wrong person is proved, (g).

First contingency of deposit : Refusal to receive or accept the compensation :—Sec. 31 (1) provides that on making an award under section 11, the Collector shall tender payment of the compensation awarded to the persons interested entitled thereto according to the award and on their refusal to receive or accept the same, the Collector has no other option but to put the compensation awarded by him in civil deposit, *i. e.*, in deposit in Court.

Second contingency of deposit ; Incompetency to alienate :—Lunatics, idiots, and minors, are not competent to alienate. It has been observed by Their Lordships of Judicial Committee of the Privy Council in (h), that “the guardians of the minors, and the committees of lunatics or idiots shall be deemed respectively the persons entitled to act to the extent as the minors, lunatics or idiots themselves, if free from disability, could have acted. These words must be read with reference to the obligations and duties of guardians and committees. Although the Court of Wards had no power to alienate the land for the purpose for which it was acquired, possession might have been lawfully taken of it if the provision of the L. A. Act had been complied with. It is not true, as the High Court seems to have thought that as the Maharaja, if he were of age, might waive the right to compensation, his guardian might do so. The Maharaja, if of age, might have made a present of the land to the town but it was known by all parties that the manager had no power to do this.”

Owners of service inam :—A service *inam*, unless enfranchised, is land which the owner is incompetent to alienate within the meaning of section 31(2) and 32(1) of the L. A. Act, (i). The word “if there be no person competent to alienate the land” in sec. 31(2) of the L. A. Act must necessarily apply to a case where there is no present title in the person who has come forward as a claimant to the compensation fixed by the Collector. Sections 31 and 32 provide for the case of persons who by reason of a personal disability have no absolute power to alienate and are intended to protect the interest of reversioners, *e. g.*, when land is taken away from the possession of such persons who hold it only on a life estate or similar limited estate such

(g) *K. N. K. R. M. K. Chettiyar firm v. Secy. of State*, A. I. R. 1933 Rang. 176 Dy. Collector, *Cocanda v. Maharaja of Pithapur*, I. L. P 49 Mad. 519.

(h) *Luchmeswar Singh v. Chairman, Darbhanga Municipality*, 18 C. 99.

(i) *Govinda Goundar v. Ramein*, 25 I. C. 600.

as, minors, lunatics, Hindu widows, administrators, etc. or where the legal estate is in one person and the beneficial estate in another. In the case of inam granted as a personal inam to the family of the grantee, the grantee having a heritable estate in full proprietorship, the grant being of the soil and conveying a full interest in the land without any condition in restraint of alienation, the inamdar and his assigns are owners of the villages and have an interest in the land and are entitled to the benefit of that interest. Such person cannot be said to have no power to alienate the land within the meaning of sec. 31(2) of the Act. Such an inamdar does not fall under secs. 31 and 32. The amount of compensation awarded for acquisition of such inam lands can not therefore, be directed to be deposited in Government securities and interest alone directed to the inamdar. He is entitled to receive the full amount or compensation in cash, (j).

Hindu widows and effect of Hindu Succession Act 1956 :—Prior to the passing of Hindu Succession Act 1956 where land which was taken up by the Government under the L. A. Act for public purposes was held at the time by two widows holding the usual Hindu widow's life estate therein, it was held that the compensation awarded for such land should not be paid over to the widows but should be invested in land to be held on similar terms, (k). Sections 31 and 32 apparently provide for the case of persons not having absolute power to alienate the property acquired and so a widow holding a life estate under the customary law comes under the purview of secs. 31 and 32 though she has power to alienate for necessity, (l). A piece of land with some buildings and trees on it was taken up by the Government under the provisions of the L. A. Act, 1894. The land belonged to a Hindu widow but evidence was given in her behalf that her husband's native country was Bikaner, and that according to the personal law, his widow would take an absolute interest in the property left by him, and not merely an ordinary Hindu widow's estate. It was held that the widow was entitled to be paid the whole of the price awarded for the land and not merely to have it invested for her and to receive interest during her life-time, (m).

But since the passing of the Hindu Succession Act 1956 a widow gets absolute right to her deceased husband's properties under Ss. 14 and 15 of that Act. So she becomes the absolute owner of same, (n). The widow gets absolute right to moneys deposited or invested under sec. 32 of this Act even if acquisition is made prior to the passing of that Act, (o).

Trustees and shebaitis :—Land dedicated to an idol or to religious and charitable purposes is land belonging to the shebait or trustee "who has no power to alienate the same." (p). The position of a shebait is analogous to that

(j) *Mahadev Balkrishna v. Dt. Collector, Poona*, 40 Bom. L. R. 422 : 176 I. C. 642 : 1938 A. I. R. (Bombay) 325.

(k) *Sheoratan Rai v. Mohri* (1899) A. W. N. 96 ; *Sheo Prasad Singh v. Jaleha Kunwar*, 24 All. 189.

(l) *Mt. Gangi v. Santu*, 116 I. C. 335 : (1929) A. I. R. (L) 736.

(m) *Krishna Bai v. Secretary of State*, 42 A. 555 : 18 A. L. J. 695 : 57 I. C. 520.

(n) *Bhabani Prasad Saha v. Sm. Saratsundari Chowdhurani*, A. I. R. 1957 Cal. 527.

(o) *Saila Bala Dasi v. Saila Bala Dasi*, A. I. R. 1961 Cal. 24. See notes under sn. 32.

(p) *Kaminee Debi v. Pramotho Nath Mookerjee*, 39 C. 33 : 12 C. L. J. 597 : 10 I. C. 491.

of the manager of an infant. He is entitled to possess and to manage the dedicated property, but he has no power of alienation in the general character of his rights. Section 31 (2) applies to a shebait since he is not competent to alienate the land, (q). Properties set apart for charities are *prima facie* inalienable; and where such properties are acquired under the L. A. Act the award made thereunder may direct the investment of the compensation money, (r).

The *karta* of a Mitakshara joint family represents the joint family and he is the proper person to receive the amount in deposit. Where joint family property was acquired under the L. A. Act and before the compensation money was withdrawn, the *karta* in whose name the property stood died, it was held that the person who next became the *karta* of the joint family was entitled to withdraw the money and not the heir of the last *karta*, (s). In *Daya Chand Parruk v. Bhim Singh*, (s-1) the L. A. Court refused the application for withdrawing the compensation by the *karta* of the family, holding that the *karta* was not a person who had power to alienate the property as contemplated by section 32 of the L. A. Act. The High Court in revision held that "the case cannot be distinguished from the case of *Dindayal v. Ram Babu*. In the last mentioned case the *karta* of the family was allowed to withdraw the compensation money. We see no reason why a similar order should not be made in this case."

Impartible estate :—If lands forming part of an impartible estate are compulsorily acquired by Government, the compensation money should be deposited in Court under s. 31 of the L. A. Act for the purpose of being converted into other lands to form part of the impartible estate and should not be paid to the holders of the estate, (t).

Third contingency of deposit : Dispute as to title or apportionment :—It has been seen (s. 30) that when the amount of compensation has been settled under sec. 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. It follows that in sending the reference the Collector has to send also the compensation awarded by him, in regard to which there has been the dispute to the civil court in civil deposit for determination of the question of title to the whole or portions of the same which has been referred. The compensation money remains in deposit in Court till the final determination of the question of title or apportionment. When Government are acquiring immovable property for a public purpose under the Act, it is for the person claiming compensation to establish his title to it affirmatively, (u).

(q) *Ram Prosanno Nundy v. Secretary of State*, 40 C. 895 : 18 C. W. N. 653 : 22 I. C. 272.

(r) *Shiva Rao v. Nagappa*, 29 M. 117.

(s) *Dindayal v. Ram Babu*, 32 C. W. N. 815.

(s-1) *Daya Chand v. Bhim Singh* 1929 A. I. R. Cal. 379.

(t) *Special Deputy Collector, Ramnad v. Raja of Ramnad*, 58 M. 442 : 68 M. L. J. 575 : 1935 M. W. N. 160 : 41 L. W. 267 : 157 I. C. 500 : 1935 A. I. R. (M) 215.

(u) *The Secretary, Cantonment Committee, Barrackpur v. Saitsh Chandra Sen*, 57 I. A. 339. *Hari Chand v. Secretary of State*, 20 P. L. T. 739 : 1939 A. L. J. 859 : 44 C. W. N. 5 : 70 C. L. J. 334 : 50 L. W. 406 : 1939 O. W. N. 760 : 183 I. C. 328 : (1939) 2 M. L. J. 722 : 1939 A. I. R. (P. C.) 255.

Scope of enquiry by Court in a reference under section 31 :—On a reference made to the Court under section 18 or section 31 of the L. A. Act it is not open to the Court to decide the amount of compensation payable to a party who never asked for a reference and to give him a decree for anything more than what was awarded by the L. A. Officer, in the absence of a reference made to the Court by the L. A. Officer at the instance of such person. On a reference under section 18 the jurisdiction of the Court is confined to considering and pronouncing upon the objection which has been raised in the written application for the reference, (v).

Parties in a reference under section 31 :—Where the collector fails to name all persons interested in the land when he makes the reference, it is only a mere irregularity and does not vitiate the reference. Where the tenants are not made parties to a reference, in their absence the matter would have to be dealt with as between the *Malguzar* and the collector. If the collector has paid the *Malguzar* too little he must make good the difference and the fact that he has possibly overpaid the tenants, must be ignored so far as the reference proceedings are concerned, (w).

Right of disposal by Court of the money in deposit :—As to how the money in deposit in Court under section 31 would be disposed of by Court has been dealt with by sections 32 and 33 of Act I of 1894. Section 32 deals only with those cases in which the money in deposit was awarded in respect of land "which belonged to any person who had no power to alienate the same" and section 33 deals with cases other than those mentioned in section 32, i. e., with those cases in which the claimants did not consent to receive the compensation or there was dispute as to the title or apportionment of it. It is the Court which has got the complete control over the money. It has jurisdiction, pending the decision, as to who is lawfully entitled to it, to take charge of the money or to put in trust in some of the parties and permit him to retain custody of the money until he decides the rival claims of the parties, (x).

Directions of the Civil Courts binding on L. A. Court :—It is clear that the minors, lunatics, administrators, and shebaitis are amongst those who are incompetent to alienate property and hence they are not entitled to receive the compensation money from the Collector. In cases of minors and lunatics, their guardians are competent to alienate land with the sanction obtained from the District Judge. This is also the case of a person to whom Letters of Administration have been granted. He had no right to alienate the property except with the leave of the court which has granted him Administration. Where the natural guardian of a lunatic, in whose name a sum of money representing his share of compensation money paid by the Land Acquisition Collector was in deposit in the court of the L. A.

(v) *Narayana Gajapati v. Annapurnamma Garu*, I. L. R. (1941) Mad. 753 : 1941 M.W.N. 346 : 53 L. W. 463 : (1941) 1 M. L. J. 527 : A. I. R. (1941) Mad. 660 : 198 I. C. 732.

(w) *Sadasheorao Krishnarao Butlar v. Collector Nagpur*, I. L. R. (1942) Nag. 740 : 1942 N. L. J. 303 : 201 I. C. 754 : A. I. R. (1942) Nag. 86.

(x) *Jugal Kishore v. Pratab Dei*, 26 A. L. J. 250 : 113 I. C. 7 : (1925) A. I. R. (A) 239.

Judge, obtained an order from the District Judge under section 57 of Act IV of 1912 for payment to him of a portion thereof for the maintenance of the lunatic, the L. A. Judge had no jurisdiction to refuse the guardian's application for withdrawing the money, (y).

It has been held in (z), that "the compensation money representing the estate of an incompetent person partakes the nature of real property and does not lose its character as such because it has been transformed in shape." An alienation made with the permission of the District Judge by a Hindu widow who had obtained Letters of Administration in respect of the estate, is valid as an absolute alienation under sec. 90 of the Probate and Administration Act irrespective of the existence of legal necessity, (a). A purchaser of property from a Hindu widow who was an administratrix of her husband's estate by virtue of leave obtained from the Judge of the Probate Court, is not required to prove legal necessity for sale and entitled to the whole of the compensation money awarded for the acquisition of the land purchased by him from the Hindu widow, (b).

In *re K. S. Banerjee* (c), the order appointing the petitioner as receiver ran in the following words : "and it is further ordered that the said receiver be also at liberty to withdraw the securities representing the compensation money and deposited with the Tribunal of the Improvement Trust, Calcutta and the interest accrued due and to accrue due thereon." The President declined to part with the securities inspite of the above order of the Court. It was held that under section 32 the Acquisition Court is not absolutely vested with the compensation money. It is apparent that the possession of the receiver is the possession of the Court and the money, if made over to the receiver will remain in *custodia legis*. The law does not vest the Acquisition Court with such power as to retain the money in its possession inspite of the direction of a competent Civil Court.

Receipt of compensation under protest :—When a claimant is dissatisfied with the Collector's award, it is but natural that he should take the earliest opportunity to signify his dissent from the same. He must refuse to accept the compensation, lodge his protest against the award of the Collector by a petition for reference under section 18. The law presumes consent in the absence of any protest and in the event of a claimant receiving the compensation without recording his protest against it, he is precluded for ever from praying for a reference under sec. 18 of the L. A. Act. Hence it has been provided in the proviso to sec. 31 (2) that "no person who has received the amount otherwise than under protest shall be entitled to make any application under sec. 18." According to the ordinary principles of agreement when an offer is made and accepted it becomes a contract and binding on the parties. In cases in which a claimant accepts the award, that is, the tender of the Collector, he cannot be permitted to object to the same

(y) *Satyendra Nath Dey v. Secretary of State*, 20 C. W. N. 975.

(z) *Mrinalini Dasi v. Abinash Chandra Dutt*, 14 C. W. N. 1024 : 11 C. L. J. 533 : 6 I. C. 508.

(a) *Kamikhya Nath Mukherjee v. Hari Charan Sen*, 26 Cal. 607.

(b) *Chunilal Haldar v. Mokshada Debi*, 31 C. L. J. 379.

(c) *In re K. S. Banerjee*, 107 I. C. 738 ; 1928 A. I. R. (Cal.) 402.

and claim a reference thereof to the Civil Court. Similarly a person who has taken payment *without protest* must be deemed to have waived his objections to the award, if any, and can not claim a reference thereafter, [vide section 20 (b)].

Acceptance by cheque :—Where a petitioner took a cheque by virtue of an ex-parte order for award of compensation but did not get it cashed and instead applied for reference under sn. 18 L. A. Act which was refused. On a motion for writ of mandamus to be issued to the L. A. Officer to make a reference the court held that a mere receipt of the cheque without protest did not amount to receipt of compensation which was still lying with the Government. Hence there was no receipt of payment otherwise than on protest so that the bar under the 2nd proviso to Sn. 31 (2) did not apply and the petitioner was entitled to the writ prayed for, (d).

Acceptance of Treasury Challan is waiver :—It has been held that government is not a bank and a bill on treasury is not negotiable like a cheque. Therefore the argument that the receipt of a bill drawn on a treasury is not the same as receipt of cash but it is in nature of a cheque and so protest can be lodged at any time before cash is received, is not tenable. There is no difference between 'receipt of payment' and 'receipt of amount' and no protest having been lodged with Land Acquisition Officer at the time of receiving the bill, the payee is not entitled to make an application under sec. 18 within meaning of second proviso to sec. 31(2) of the Act, (e). It is immaterial when actual cash was received.

The protest recorded in the application under sec. 18 is not sufficient. A protest ought to be made in the application for receiving the amount of compensation, if any, and must be recorded in the receipt granted by him, (f). But this has been dissented from in (g), where it was held that a Collector acting under s. 18 performs judicial function and is a tribunal within meaning of Art. 227 of the Constitution and that in accepting compensation the words "under protest" need not be on the receipt itself but it would be enough if those words appear on the applications or elsewhere in the matter, (h).

Suit to recover compensation money, when lies :—The intention of the Legislature to make proceedings under this Act final and to make the mode of dealing with the questions to be raised under this Act exhaustive and self-contained is quite clear. Ordinarily where rival claimants come before the Court on a reference under s. 31, the Court has a duty to decide which of the claimants is entitled to the money deposited in Court. There is no provision in the Act which authorises the Court to refer the parties to a separate suit, (i). The third proviso in sec. 31 (2) follows a declaration

(d) *K. Krishna Rao v. L. A. Officer*, A. I. R. 1960 Mys. 264.

(e) *Somasundaram Mudaliar v. District Collector, Chittoor*, A. I. R. 1967 Andh. Pra. 126.

(f) *Suresh Chandra Roy v. L. A. Collector*, A. I. R. 1964 Cal. 283.

(g) *Md. Golam Ali Mina v. L. A. Collector*, A. I. R. 1969 Cal. 221.

(h) *Atul Kumar Bhadra v. State of West Bengal*, Civ. Revn. No. 1925 of 1957, is dissented from.

(i) *Swaminatha Ayyar v. Kuppuswami Ayyar*, 1938 M. W. N. 950 : 48 L. W. 450 : 1938 A. I. R. (M) 955.

that "payment of the compensation shall be made by the Collector according to the award to the persons named therein, or in the case of an appeal according to the decision of such appeal." That no doubt, is intended to include the case of a decision under sec. 39 of the old Act of 1870. It provided that any person who might receive the whole or any part of the compensation awarded under this Act (Act X 1870) shall be liable to pay the same, and no doubt compellable by suit to pay the same to the person lawfully entitled thereto, and what the legislature had in view was that if any person by virtue of a particular title, which was not really vested in him at the time, should prevail against any person claiming under a different title, before the court upon the question of apportionment, he shall be liable and compellable to pay over the money which he may have received under that decision to some other person *not a party to the process in whom that title really vested, not that it should be competent to the parties after a full investigation before the Court under sec. 39, and after an appeal to bring a regular suit and reopen the identical question before a different Court.* A decision of the Court if not appealable and if there is an appeal the decision of the appellate Court is final and not liable to be contested by a suit, (j). Persons who have not come before the Collector or the Acquisition Judge are at liberty to controvert the award of the Collector in a suit and to prove that they were the lawful owners of the property and therefore the persons who were entitled to recover the amount of compensation, (k).

In proceedings under the L. A. Act the persons entitled to take land compulsorily deal only with those who are in possession of it, or who are ostensibly its owners. It may happen that the real owner, being an infant, or a person otherwise under disability does not appear and is not dealt with in the first instance. There is, therefore, the proviso to the effect that nothing contained in that or the preceding sections shall effect the liability of any person who may receive the whole or any part of any compensation awarded under the Act to pay the same to the person lawfully entitled thereto. This applies only to persons *whose rights have not been dealt with in adjudications in pursuance of secs. 38, 39 and 40 (Act X of 1870)* and does not permit a person whose claim has been disposed of in the manner pointed out in the Act to have that claim re-opened and again heard in another suit, (j). A person claiming a portion of the compensation awarded by the Collector in L. A. proceedings is entitled to maintain a civil suit to establish his claims where the question of apportionment of the compensation money has not been determined, (l).

Where property subject to a mortgage, is acquired by Government under the L. A. Act and the whole compensation is paid to the mortgagor without notice of the mortgage, the mortgagee may claim a reference under sec. 18 to the Civil Court and after the expiration of 6 months he is confined by the Act to a suit under sec. 31 against the person to whom money was wrongly paid. There is no other remedy at all

(j) *Nilmonee Singh Deo v. Rambundhoo Rai*, 4 Cal. 757 (761). 7 Cal. 388 (P. C.)

(k) *Gulmir Khan v. Habibulla Khan*, 160 : I. C. 1010 : 1936 A. I. R. (Pesh) 29.

(l) *Chandulal v. Ladli Begum*, 18 P. W. R. 1919 : 49 I. C. 657.

either against the Secy. of State or the L. A. Collector. Where a new right is brought into existence by a statute and a remedy in respect of that right is also given by the same statute, that remedy is exclusive of any ordinary rights. The compensation money payable under the L. A. Act is payable under that Act and that Act only. Any rights in respect of it are creatures of the statute and nothing else. The statute, in creating the rights, has given the remedies to be exercised in respect of those rights. The principles of the L. A. Act are that the Crown should in the first instance be allowed to recognise the person in possession as ostensible owner. A mortgagee as such need not be recognised at all, though he can within a certain time and within certain limits come in and institute proceedings provided under the Act, (m). Where the L. A. Officer, after a person is adjudicated an insolvent, erroneously pays to his mortgagee on a void mortgage, a certain amount as compensation instead of paying the same to the Official Receiver who has no notice under s. 31, L. A. Act, of the proceedings, the Official Receiver has a right to sue for the recovery of the amount paid, (n).

Joint family property :—In law all the cosharers are entitled to enjoy and possess the common property jointly, and if one of them asserts an exclusive title to any portion of such property, and ousts his co-sharers from enjoyment or possession of the same, the latter can certainly institute a suit for the recovery of the joint possession in respect of that particular item without being obliged to sue for partition of the entire joint estate. When a joint property is acquired under the L. A. Act, the enjoyment which the co-owners are entitled to under the Act, is to get proportional share of the compensation money that is given by the award. Consequently, if one co-sharer receives any thing in excess of his share or the whole amount of the compensation money he is bound to refund it to the true owners and this is a right which is recognised by the proviso to sec. 31 (2). A suit by a co-sharer for his share of the compensation money falls under sec. 31 (2) and can not be regarded as a partition suit. Sec. 31 (2) last proviso apparently contemplates a civil suit. It does not create a right to a refund of the money but simply recognises the right which exists independently of the section, (o).

Necessary party in a suit to recover compensation money :—The Secretary of State is not a necessary party or a proper party to a suit for recovery of compensation, alleged to have been paid to a wrong person. Once compensation has been awarded under the Act and either no reference has been made to the Court or a reference has been finally decided, the Secretary of State and his agents have no further liability but the liability of any person who has received the whole or any part of the compensation to pay the same to the person lawfully entitled thereto is not affected, (p).

In Secretary of State v. Kuppusamy (q), the Collector paid the amount to

(m) *Secretary of State v. Kuppusami Chetti*, 46 M. L. J. 361 : (1924) M. W. N. 138.; 78 I. C. 82 : (1924) A. I. R. (M) 521.

(n) *Dharamdas Thayerdas v. Sorabji*, 121 I. C. 876 : 1930 A. I. R. (S) 75.

(o) *Hemanta Kumar Banerji v. Satish Chandra Banerji*, A. I. R. (1941) Cal. 635.

(p) *Murad Khan v. Abdul Razig*, 165 I. C. 924 : 1936 A. I. R. (Pesh) 198 and *Ramachandra Rao v. Ramachandra Rao*, I. L. R. 45 Mad. 320 (P. C.).

(q) *Secretary of State v. Kuppusamy*, A. I. R. 1924 Mad. 521.

the mortgagor though he was aware of mortgagee's claim. The latter failed to make any reference under Sn. 18. It was held that he could maintain a Civil Suit for the amount due to him against the mortgagor but he has no cause of action against the Government. The decree has to be enforced against the person who has wrongfully received the amount and not against the Collector. Also see, (r).

When no suit lies :—Some lands were acquired for a railway and the Collector after serving notice under L. A. Act, upon the zaminder and the patnidar apportioned the compensation money half and half between them. Neither party applied for a reference under section 18, to the Court under the L. A. Act and the patnidar withdrew the amount awarded to him. The zaminder thereupon brought a suit for recovery of the amount withdrawn by the patnidar on the ground that under the patni kabuliati the patnidar was not entitled to any portion of the compensation money. It was held *that the zaminder having been served with notice under section 9 of the Act, was bound to apply for a reference under section 18 when he was dissatisfied with the award and he cannot maintain a suit in the ordinary Court to re-open the question.* The Act creates a special jurisdiction and provides a special remedy. And ordinarily when the jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and the ordinary jurisdiction of the Civil Court is ousted, (s).

Under the third proviso to section 31, cl. (2) a person who was a party to the apportionment proceedings cannot re-open the question by a regular suit. The proviso must be given limited application and it applies only to cases when the person was under a disability who was not served with notice of the proceedings before the Collector, (t). If a person who is interested in any land acquired under the L. A. Act has any objection to the measurement made by the Collector or as to the amount of compensation awarded by him, such person must obtain a reference to the Court of the Special Judge and cannot litigate the matter by a suit in the ordinary Courts. If the objection, however, relates to the person to whom the compensation is payable, or to its apportionment among the persons interested, the matter may be investigated either upon a reference to the Court or having regard to the provision of sec. 31, cl. (2) by a suit in the ordinary courts. But although either of these two methods may be available, if he has made his choice and selected the remedies, he cannot, because he has failed in the course adopted, fall back upon the other, (u).

A person who having been made a party to a reference had the opportunity and duty of litigating his claim before the Special L. A. Judge but did not then press his claim to any part of the compensation, is not entitled to come again to the Civil Court and reopen the question, (v).

(r) *Satish Chandra v. Ananda Gopal*, 20 C. W. N. 816, *Collector, Co-canada v. Maharaja of Pithapuram*, A. I. R. 1926 Mad. 492.

(s) *Bhandi Singh v. Ramadhin Roy*, 10 C. W. N. 991 : 2 C. L. J. 359.

(t) *Saibesh Chandra Sirker v. Sir Bejoy Chand*, 26 C. W. N. 506 : 65 I. C. 711.

(u) *Bhandi Sing v. Ramadhin Roy*, 2 C. L. J. 359 : 10 C. W. N. 991.

(v) *Ranjit Sinha v. Sajjad Ahmed Chowdhury*, 32 I. C. 922.

Persons who have received notice and who have appeared before the Collector at the time of the apportionment of the compensation money must, if they object to that apportionment, make application under section 18 of the Act and are not able to avail themselves of proviso 3 to sec. 31 (2) of the Act and are therefore debarred from filing a suit, (w). Prov. 3, s. 31 (2) must be given a limited application and that a person who was a party to the apportionment proceedings cannot under that proviso be allowed to re-open the question by a regular suit, (x).

The proviso to sec. 31 (2) of the L. A. Act applies only to persons whose rights have not been adjudicated upon in pursuance of the special procedure laid down in the L. A. Act. Consequently where there has been such adjudication and the parties have not appealed therefrom, a subsequent suit for the apportionment of compensation money is not maintainable, (y).

Travancore Land Acquisition Act:—In (z), and also in *Narayanan v. Kavv Kutty Amma*, it was held that there is nothing in the wording of the third proviso to Sn. 28 (2) of the Travancore Land Acquisition Act to justify the restricted interpretation put upon it in I. L. R. 7 Cal. 388 (*Raja Nilmoni Singh's case*) and which therefore does not confer on the plaintiff the right to institute a separate suit in respect of apportionment of the compensation awarded by the L. A. Officer. The remedy provided in the statute by reference under sn. 18 must be strictly adhered to.

Reason for provision of suit:—In (a), Their Lordships of the Judicial Committee observed : "It is necessary for the Government, or the person or company entitled to take property compulsorily to deal with those who are in possession, or ostensibly the owners ; but it may happen, and frequently does happen, that the real owners possibly being infants or persons under disability do not appear, and are not dealt with in the first instance ; and therefore a provision of this sort is necessary for the purpose of enabling the parties who have a real title to obtain the compensation money. Their Lordships are of opinion that the Courts of India have rightly held that the proviso applies only to persons whose rights have not been adjudicated upon in pursuance of sections 38 and 39 (corresponding to section 30 of Act I of 1894), and that it has not the effect, which it would certainly not be reasonable to attribute to it, of permitting a person whose claim has been adjudicated upon in the manner pointed out by the Act, to have that claim re-opened and again heard in another suit."

A recent Mysore decision given in (b), stated that there is nothing in the Act to bind persons who have not participated in the proceedings either before L. A. Officer or before Court. This opinion however seems to appear

(w) *Shivmal v. Ram Chandra Bapu*, 1933 A. I. R. (Nag) 322.

(x) *Chhedi Ram v. Ahmad Shafi*, 9 O. W. N. 1176 : 141 I. C. 674 : 1933 A. I. R. (O.) 100.

(y) *Suryya Singh v. Golamjat Singh*, 47 C. W. N. 619.

(z) *Padmanabhan Narayan y. Parvathi Amma*, A. I. R. 1957, Trav. Co. 202 : I. L. R. (1955) Trav. Co. 1242 and also in *Narayanan v. Kavv Kutty Amma*, I. L. R. (1955) T. C. 1242.

(a) *Raja Nilmoni Singh v. Ram Bandhu Rai*, 7 C. 388.

(b) *Bose Gowda v. Subba Ramiah*, A. I. R. 1959 Mys. 265 (279).

as an obiter and that court itself somewhat recognised that this interpretation may lead to anomalous results.

Nature of suit to recover compensation money :—In England when money was paid into Court under the compulsory powers of section 69 of the Lands Clauses Act (1845) as compensation for lands taken which were settled or subject to encumbrances, Stuart, V. C. said : "I think when money which has been paid into Court by reason of the real estate having been taken under the compulsory powers, remains in court, it is to be held as money or personal estate in the hands of the Court impressed with trusts of real estate." Again he said : "The money in Court is to be considered, for the purpose of the question as to who was entitled to it, real estate," (c).

The land when acquired under the L. A. Act is vested in and in the possession of the Government discharged of all encumbrances therefrom. The rights of parties to the land and to any mortgage on or interest in it are transferred to the compensation money. The money paid into the treasury is to be considered as money or movable property in the treasury impressed with the trusts and obligations of the immovable property which it represents. Even if the money is considered as immovable property for the purpose of the question as to who is entitled to it, still it is in fact the money and not the immovable property. It is the fact that is to be dealt with under section 16 C. P. C. (1882), in order to determine jurisdiction. No doubt, the right to the money must depend upon the proof of the right of the plaintiff as mortgagee and purchaser under the decree, to the land. Such proof, however, will not lead to any determination in the suit of any right to any immovable property or interest therein but will lead to a determination of a right to property which is in fact moveable. Hence a suit for recovery of the compensation paid for acquisition of land is not a suit within section 16 for the determination of the right to immovable property or to any interest therein, (d).

It is a money suit which is contemplated by s. 31 (2) of the L. A. Act. In a case in which the amount of compensation money to which the plaintiffs were legally entitled had been illegally withdrawn by the defendants and consequently they are under a liability to pay the money back to the plaintiffs, and this liability is expressly recognised by the proviso to s. 31 (2) of the Act. In case of joint award in favour of two or more persons, no question of partition arises. It is no doubt true that the compensation money stands as a substitute for the property itself. In law all the co-sharers are entitled to enjoy and possess the common property jointly, and if one of them asserts an exclusive title to any portion of such property and ousts his co-sharers from enjoyment and possession of the same the latter can certainly institute a suit for recovery of joint possession in respect of the particular item, without being obliged to sue for partition of the entire joint estate. When a joint property is acquired under the L. A. Act, the enjoyment which the co-owners are entitled to under the Act, is to get proportionate shares of

(c) *In re Stewarts Trusts*, 22 L. J. N. S. 369.

(d) *Venkata Viraragavayangar v. Krishna Swami Ayyangar*, 6 M. 344 (347).

the compensation money that is given by the award. If one co-sharer receives anything in excess of his share he should be bound to refund it to the true owners, and that is a right, which is recognised by the proviso to s. 31 (2) of the Act.

But even assuming the suit in substance is for partition, it should not fail on the ground that it did not embrace all the joint properties of the parties. The rule that there can not be partial partition of a joint estate is not an inelastic rule which admits of no exception. It has been held that the application of the rule may be relaxed if the circumstances of a particular case or the interest of justice so requires, (e).

Suit to recover compensation money are not cognizable by Courts of Small Causes :—Although in (f), it was held that “A suit to enforce the liability of a person who has received compensation to pay the same to the person lawfully entitled thereto is cognizable by a Court of Small Causes” and in (g), it was held that “A suit to enforce the liability of the defendant who had received compensation to pay the same to the plaintiff who was entitled to it must be regarded as one for damages within the meaning of section 6 of the Small Causes Courts Act, notwithstanding questions of title might have to be inquired into incidentally.” it has been held in (h), that Article 14 of the second schedule of the Provincial Small Causes Courts Act (IX of 1887) excludes suits for the recovery of compensation paid under the L. A. Act from the Small Causes Court’s jurisdiction.

Suit against Government for recovery of compensation money :—In (i), the appellant never appeared before the Collector and there was never any dispute before the Collector as to title to receive compensation. It was held : “Cl. (2) to section 31 L. A. Act had therefore no application and under the provisions of cl. (1), section 31, the Collector was bound to pay the money to the respondent. It can not be suggested that in such circumstances the Collector should never be held liable to pay out the money again. There may be cases in which he has shown such negligence that he could rightly be held liable for the loss by a claimant of money which the courts subsequently hold should have been paid to him. Where the Collector has paid the amount of compensation, the Court can not direct him to pay again to some one else, unless he has shown such negligence that he could be rightly held liable to do so.”

Suit by Government for recovery of compensation money :—Where money has been paid by the plaintiff to the defendant under the compulsion of legal process, which is afterwards discovered not to have been due, the plaintiff cannot recover it back in an action for money had and received. The

(e) *Rajendra Kumar Bose v. Brojendra Kumar Bose*, 37 C. L. J. 191, *Kali Charan Singha v. Kiron Bala Debi*, 29 C. L. J. 494 and *Tarini Charan Chakraborty v. Debendra Lal Dey*, 39 C. W. N. 1044, *Hemanta Kumar Banerjee v. Satis Chandra Banerjee*, 46 C. W. N. 212.

(f) *Musammatt Nurbehary v. Anwar Ali*, 8 P. R. (1883) F. B.

(g) *Gurumukh Singh v. Ram Narayan*, 5 P. R. (1886).

(h) *Tirupati Raju v. Vassam Raju*, 20 Mad. 155.

(i) *K. N. K. R. M. K. Chettyar Firm v. Secretary of State*, 11 R. 344 ; 1933 A. I. R. (R) 176.

principle of law is that not only money paid under a judgment, but even money paid under the pressure of legal process cannot be recovered, (j). Money paid by Government to the claimant under the order of the Court in land acquisition proceedings cannot be recovered on the ground that the property acquired belonged to the Government and that proceedings for land acquisition were started by Government through mistake in ignorance of its own title, (k).

Limitation for suits to recover compensation money :—When compensation money was paid by Government to a certain person representing himself as the owner of the land acquired, a suit by the real owner for the recovery of the same from that person should be brought within 6 years from the date of the payment of the amount to the defendant by the Government (l), In (m), where the compensation money awarded by Government for land acquired had been withdrawn by a tenant representing himself as the owner, it was held that a suit by the landlord against the tenant for recovery of his share of the compensation money was governed by Art. 62 (3 years) or Art. 120 (6 years) of the Limitation Act and not by Art. 36 (2 years) and in (n), it was held that Art. 17 (1 year) of the Limitation Act has no application to a case where the amount of compensation has not been determined. It only applies to a case in which the Collector fails to pay or deposit in Court the amount awarded by him. Art. 18 (1 year) also has no application as it applies to suits for non-completion of and refusal to complete the acquisition. The limitation provided by Proviso (a) sub-section (2) of section 18 of the Act is not intended to be an absolute limitation as to time, (o).

Land had been taken under the L. A. Act, possession having been taken by the Collector before an award was made. The Collector subsequently refused to give an award on the ground that the land belonged to Government. More than one year after the Collector's refusal to give an award, the present suit was instituted for declaration that the land belonged to the plaintiffs, and for recovery of possession, or, in the alternative, for damages for the wrongful refusal of the Collector to give the award. The finding was that the land was the plaintiffs'; but the plea of limitation was raised. It was held that the suit was not barred by limitation. The land had vested absolutely in Government, and so plaintiffs were not entitled to recover possession but could only claim damages for breach of statutory duty on the Collector's part. The suit contemplated by Article 18 of the Limitation Act is one for compensation for non-completion and that Article does not apply to a case in which the

(j) *Marrlot v. Hampton*, (1797) 2 Sm. L. Cases 409; *Moore v. Vestry of Fulham* (1195) 1 Q. B. 399; *Kishen Sahai v. Bakhtawar Singh*, 20 All. 237.

(k) *Secretary of State v. Satyasaheb Yeshwantarao Holkar*, 34 Bom. L. R. 771 : 1932. A. I. R. (B) 386.

(l) *Azroal Singh v. Lalla Gopeenath*, 8 W. R. 23.

(m) *Raja Kshetro Kristo Mitter v. Kumar Dinendra Narain Roy*, 3 C. W. N. 202.

(n) *Rameswar Singh v. Secretary of State*, 34 Cal. 470 : 5 C. L. J. 669 : 11 C. W. N. 356.

(o) *Sreemutty Punnabati Debi v. Raja Padmananda Singh Bahadur*, 7 C. W. N. 538.

land has vested in Government. Article 120, therefore, governed the suit, (p).

Appeal against an order made under Section 31 (2) L. A. Act :—A reference under section 31 (2) of the L. A. Act is made under section 18 of the Act. When such reference is made the Court makes an award under section 26 and it has the force of a decree. It is an award of Court and appealable under section 54 of the Act, (q).

Local Rules for payment :—The various State Governments have framed rules for the purpose of payment of compensation in their respective Land Acquisition Manuals viz. In West Bengal, The West Bengal Land Acquisition Manual, 1951, relevant portions being Paragraphs 92 to 104. In Madras it is Madras Board's Standing Order, 90 (20) & 90 (29) etc.

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

32. (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

- (a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or
- (b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit ;

and shall direct the payment of the interest of other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

- (i) in the purchase of such other lands as aforesaid; or
- (ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely :—

- (a) the costs of such investments as aforesaid ;

(p) *Muntharavadi Venkayya v. Secretary of State*, 27 Mad. 535 ; *Promotha Nath v. Bhuban Mohan*, 25 C. W. N. 585.

(q) *Mahabir Prasad v. Dharma*, 1941 O. W. N. 1325 ; 1941 A. W. R. 391.

- (b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

State Amendment

West Bengal.—By Land Acquisition (West Bengal Amendment) Act XXIV of 1964.

[See under Part III, Chapter XV, West Bengal (1).

See also notes under this Section.]

Notes

There was no corresponding section in the old Act X of 1870.

Object of section 32 :—The only case contemplated by the draughtsman (of the section) was the case where the legal estate was in a person possessing only a limited interest while outstanding rights were in a beneficiary or reversioner who, upon the exhaustion of the limited estate, would become, in the words of the clause “absolutely entitled” to the land. Familiar instances of such possession are supplied by the case of a Hindu widow or a tenant-for-life. The provisions of section 32 cannot be made applicable to a case where the land compulsorily acquired is an unrecognised sub-section of a *narva* holding, (a). If the *tarwad* had power to alienate the land in respect of which the compensation had been awarded section 32 did not apply, (b).

Where land which was taken up by the Government under the L. A. Act for public purposes was held at the time by two widows holding the usual Hindu widow's life estate therein, it was held that the compensation awarded for such land should not be paid over to the widows, but should be invested in land to be held on similar terms, (c). As has been observed in (d), sections 31 and 32 of the L. A. Act are intended by the Legislature to protect the interests of the reversioners when land is taken from the possession of a person who holds it only on a life estate and a widow holding a life estate under the customary law is within the purview of these sections. Till the money passes into the hands of a person absolutely entitled thereto there is constructive reconversion of it into land. Section 32 makes it reasonably clear that although an owner may be deprived of the land for the sake of public purposes the legislature intended that the protection enjoyed by

(a) *Assistant Collector of Kaira v. Vithal Das*, 40 B. 254 : 18 Bom. L. R. 1140 : 33 I. C. 464.

(b) *Mahamad Ali v. Ahammadali*, 26 M. 287.

(c) *Sheo Ratan v. Mohri*, 21 All. 354 ; *Sheo Prosad v. Jalaha Kunwar*, 24 All. 189.

(d) *Gangi v. Santu*, 116 I. C. 335 : (1929) A. I. R. (L) 736.

reversionary heirs when land is in the hands of limited owners should not by reason of the acquisition alone be completely withdrawn, (e).

Scope of section 32 :—Section 32 consists of the parts : (1) the order of investment ; (2) the final order of payment. The compensation money remains in deposit in court until the disability ceases. During this period the money is invested in G. P. Notes or in purchase of lands. When the disability ceases the money is paid to the person finally entitled thereto. In (f), the question that arose was whether “investment in the purchase of other lands” in section 32, would include erection of buildings. Sec. 32 of the Land Acquisition Act provides that the Court shall order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held. The only question for consideration therefore was whether the erection of buildings would come within the words ‘invested in the purchase of other lands’ in sec. 32 of the Act. The Court in delivering the judgment held : “having regard to the definition of the expression land, we think that the words of sec. 32 would include the erection of buildings upon the land and if the Court is satisfied that the money would be invested in the erection of buildings as proposed by the petitioners, we are of opinion that he is bound to pay the money over to the petitioners.”

Section 32 of the L. A. Act contemplates the application of the compensation money in the purchase of other lands. These lands when acquired, become additions to the estate of the full owner from whom widow derives title. When a Hindu widow asks for an application of a portion of the fund to discharge a burden which has been imposed upon another portion of the estate of the husband of the lady it is not the investment of money in the purchase of other lands but the satisfaction of a charge imposed upon another portion of the estate which could never have been intended by the framers of section 32 as an investment, (g). Under the provisions of sec. 32 (2) of the L. A. Act, the L. A. Court can apply a portion of the compensation money to meet the costs of the proceedings by which the money came to be awarded to an administratrix having a limited power of alienation. A solicitor, who appears on behalf of an administratrix having limited powers in a L. A. proceeding, is entitled to his costs in connection with that matter and can also move the Court to make the payment out of the sum in deposit in court for the administratrix, as the person from whom the sum is due, (h). The charges and expenses made by an attorney engaged by a L. A. Judge for investigation of suitability, market value, and title, and other things incidental in connection with the purchase of property by way of investment of money deposited in respect of acquired lands belonging to a person incompetent to alienate property, are reasonable

(e) *Nabin Kali v. Banalata*, 32 C. 921 : 1 C. L. J. 103n ; *Gabindarani v. Brinda Rani*, 35 C. 1104 : 12 C. W. N. 1039 ; *Mrinalini Dassi v. Abinash Chandra Dutt*, 14 C. W. N. 1024.

(f) *In re Ganendra Mullick*, 25 C. W. N. 597 : 67, I. C. 18.

(g) *Devendra Nath De v. Tulsi Moni Dasi*, 26 C. L. J. 123.

(h) *Lalit Mohan De v. H. N. Dutta & Co.*, 65 I. C. 209.

charge and expenses, as contemplated by sec. 32 of the L. A. Act, and ought to be paid by the Collector, (i).

Effect of the Hindu Succession Act 1956, :—Under Sn. 14 of that Act a widow gets absolute right to her deceased husband's properties. The reversionary estate is abolished by virtue of Sn. 15 of the Act, (j). Hence even if the property really belonged to her husband and she inherits it as an heir to her husband, she becomes the absolute owner. So there is no difficulty if the acquisition of land from a female is after the passing of the Hindu Succession Act 1956, and the widow having absolute estate, no question of investment will arise. One condition for applying sec. 14 of that Act is that the widow should be in possession of the land at the commencement of that Act whether actual or constructive, (k). Possession by Receiver on behalf of a widow is also the latter's possession, (l). The words "possessed" and "held" in Sn. 14 (1) of that Act mean the same thing. Further in case the acquisition has been made before the passing of that Act then the moneys already invested under Sn. 32 of L. A. Act should be constructed as real estate having the same character as the land acquired and the widow gets absolute right to the moneys so deposited or invested, (m).

Payment of interest by the L. A. Court during the period of investment :—Under section 32 (1) (b) of the L. A. Act payment of interest has to be made to "the person or persons who would for the time being have been entitled to the possession of the said land." These words suggest that the payees from time to time may be different persons and may change. The Court is directed not to make one order for payment which is to last but to direct payment to the persons who would have been entitled for the time being, that is the persons who would from time to time be entitled to possession. The section impliedly directs that the Court should hold an enquiry to ascertain from time to time who such persons are, (n).

Power of the L. A. Court for disposal of the deposit money :—As the fund which is invested in the Government securities under section 32 of the L. A. Act, is in the custody of the Special Judge, he is competent to deal with the question of its application. He is competent to apply the fund in the purchase of other lands or in paying to a person who has become absolutely entitled thereto. Such authority, however, implies a power to make an enquiry, (o). When the land is converted into money and is in

(i) *Sm. Charan Manjuri Dasi v. L. A. Collector, Alipore*, 39 C. W. N. 251 : 1935 A. I. R. (C) 119.

(j) *Bhabani Prosad Saha v. Sm. Sarat Sundari Choudhurani*, A. I. R. 1957 Cal. 527.

(k) *Dasi Reddy Rani Reddy v. Gunnala Chinmanuna*, 1958 Andh. L. T. 561 following A. I. R. 1957 Andh. Pra. 280.

(l) *Krishna Dasi Saha v. Akhil Ch. Saha*, A. I. R. 1958 Cal. 671.

(m) *Marudukkal v. Armugha Gounder*, A. I. R. 1958 Mad. 255. See also *Saila Bala Dasi v. Saila Bala Dasi*, A. I. R. 1961 Cal. 24 relying on A. I. R. 1957 Cal. 557, Bhabini Prosad's Case.

(n) *Gurdwara Prabandhak Committee v. Hakam Singh*, 47 P. L. R. 250 : A. I. R. (1945) Lah. 267.

(o) *Mrinalini v. Abinash*, 11 C. L. J. 533 ; *Kamini v. Promotha Nath*, 13 C. L. J. 597.

the custody of a Special Judge, he is the proper officer to determine whether any portion of the fund should be made over to the widow and for this purpose to investigate whether contingencies have happened which entitle the widow to make an absolute alienation of the fund. It is incumbent upon a Hindu widow in the first instance to establish that events have happened which entitled her to spend either in whole or in part the fund invested in Government securities under sec. 32 of the L. A. Act and in the custody of the Court. When she has satisfied the Court that such events have happened, the burden shifts upon the reversioners, (p).

The money having been once deposited in the Court, the Court was obliged to observe the provisions of sec. 32 of the Act. (p-1). In the absence of evidence that the person whose land is compulsorily acquired is only a limited owner, the full amount of compensation awarded should be paid to him or her and the Court would not be justified in proceeding under section 32 of the L. A. Act, (q). It has been seen in *Jugal Kishore v. Pratap Dei*, (q-1) that during the pendency of a reference relating to rival claims to the amount of compensation awarded under the L. A. Act, the court has authority to pass orders regarding the custody of the compensation money. But it should be noted that "under section 32 the acquisition court is not absolutely vested with the compensation money. The law does not vest the acquisition Court with such powers as to retain the money in its possession in spite of the direction of a competent Civil Court", (r).

Power of the L. A. Court to order refund :—In *Mrinalini Dasi v. Abinash Chandra Dutt*, (s). Mookerjee J., in discussing whether, when money has been withdrawn in violation of section 32 of the L. A. Act, the L. A. Court can compel refund to the money improperly withdrawn, and can take adequate steps to enforce its orders made on that behalf, held : "the case of *Nobinkali v. Bonolata*, (t), indicates that the L. A. Court had such authority while in the case of *Gobindaranee v. Brinda Rane*, (u), followed in *Gangadas Mulji v. Haji Ali Mohammad Jalal*, (v), it was held that the L. A. Court is helpless in the matter ; but this latter view was adopted on the assumption that a Civil Court in a suit properly framed for the purpose, may afford adequate relief. The learned judges observed that although a Court may have inherent power to order a refund of money which has been wrongfully obtained by any party by an abuse of its process, a District Judge is not entitled to order a refund of money paid by a Collector under the L. A. Act without any irregularity apparent at the time, and without any order from the Civil Court. It is needless for us to consider whether the view taken in *Nobinkali v. Bonolata* or that adopted in *Gobinda-*

(p) *Devendra Nath De v. Tulsi Moni Dasi*, 26 C. L. J. 123.

(p-1) *Nihal Kuar v. Secretary of State*, 13 I. C. 550.

(q) *Krishna Bai v. Secretary of State*, 42 All. 555 : 18 A. L. J. 695 : 57 I. C. 520.

(q-1) *Jugal Kishore v. Pratap Dei*, 113 I. C. 7 : 26 A. L. J. 250 : 1928 A. I. R. (L) 239.

(r) *In re K. S. Bonerjee*, 137 I. C. 738 : 1928 A. I. R. (C) 402.

(s) *Mrinalini Dasi v. Abinash Chandra Dutt*, 14 C. W. N. 1024 (1028), 11 C.L. J. 533.

(t) *Nobinkali v. Bonolata*, 32 Cal. 921.

(u) *Gobindaranee v. Brinda Rane*, 35 Cal. 1104 : 12 C. W. N. 1339.

(v) *Gangadas Mulji v. Haji Ali Mohammad Jalal*, 42 B. 54.

ranee v. Brinda Ranee is well founded on principle. One position appears to us to be beyond controversy, namely, that, when a Civil Court gives a declaration, as the Court below has done in the present case, that a defendant has qualified interest in the property but under a pretence of absolute ownership has taken possession of funds which he would not otherwise have been entitled to seize in view of the provisions of section 32 of L. A. Act, the Court has ample power to give necessary directions to render effective the declaration which it has made. If any authority is needed for this proposition, reference may be made to the case of *London and North Western Railway v. Lancaster Corporation*, (w). In that case a Railway Company under pressure paid the purchase money for lands, acquired under the Lands Clauses Act (1845) to the owners of the property instead of bringing it into Court under section 69 of the Statute (8 & 9 Vict., c. 18) which corresponds with section 32 of the L. A. Act. Sir John Romily M. R. ruled that, upon a bill filed by the company who had acquired the land, the owners would be compelled on motion to pay into Court the purchase-money in their hands for the purpose of interim protection. If we regard the matter as one of principle, it is obvious that the contrary view urged by the respondent is entirely unsustainable. As was pointed out by Sir George Jessel, M. R. in *Kelland v. Fulford*, (x), when land has been converted into money by reason of the proceedings of the Lands Clauses Act, the money remains impressed with the character of real estate, (y). In other words till the money passes into the hands of a person absolutely entitled thereto, it is well settled that Courts in this country, in the absence of statutory provisions precisely applicable, to a particular set of circumstances, are to act according to rules of equity; justice and good conscience. In our opinion the Court has ample power to compel the defendant to bring the money back into Court for investment", (z).

The substantial question in controversy in *Jogesh Chandra Roy v. Yakub Ali*, (a), was whether the money having been paid out by the Collector "the reference for apportionment was permissible under section 18 as the Judge had no jurisdiction to compel the respondent to bring back into Court the money paid out to him." The High Court held : "if the view were to prevail, the jurisdiction of the Court under section 11 might be ousted wherever one of the parties managed to obtain payment of the compensation money awarded by the Collector. There is no reason why the jurisdiction of Special Court provided by the Legislature for the adjudication of the question of apportionment should be ousted. The Court has inherent power to recall the money improperly paid out", (b). When a party has wrongly taken from the Court moneys deposited in Court by his opponents

(w) *London & North Western Railway v. Lancaster Corporation*, (1851) 15 Beav. 22.

(x) *Kelland v. Fulford*, (1877) 6 Ch. D. 491.

(y) *Ex parte Walker*, (1853) 1 Drewry 503 ; *In Re Harrop's Estate*, (1857) 3 Drewry 726.

(z) *Mookoonda Lal Pal Chowdhury v. Mahommed Sami Meah*, 14 C. 484 ; *Govind Vaman v. Sakharam Ramchandra*, 3 B. 42.

(a) *Jogesh Chandra Roy v. Yakub Ali*, 17 C. W. N. 1357.

(b) *Gangadas Mulji v. Haji Ali Mohammed-Jalal*, 42 B. 54.

that Court has *inherent* jurisdiction to enforce a refund of the amount with interest, (c).

A contrary view has, however been taken in *Gohar Sultan v. Ali Muhommad*, (d), where it has been held that there is no provision in the L. A. Act empowering a Court to order a person who has received the money awarded to him to refund it. An order made by a Court in proceeding under the L. A. Act, directing a party to whom a sum of money awarded as compensation under the Act has been paid under a previous order to refund money, is not an award or a portion of the award within the meaning of section 54 of the Act and is therefore not appealable. Such an order will however, be set aside in revision if made without jurisdiction.

Procedure for investment :—Under sec. 32 the L. A. Court has jurisdiction to make an enquiry and to order re-investment of the compensation money which has been once invested in Government securities under section 32 (1) (b), and to invest in the purchase of lands. He is also empowered to enquire into the suitability or otherwise as to the investment made. Where the Court in course of an enquiry into the valuation of certain properties referred the matter to a valuation expert and accepted his valuation without giving an opportunity to the parties concerned to examine the report or cross-examine the expert and make their submissions on it, the procedure was held to be irregular, (e). Although the L. A. Court has power to re-invest in the purchase of land compensation money kept in deposit under s. 32 (b) of the L. A. Act and already invested in approved securities, it must exercise its discretion with care and should not ordinarily move unless the persons interested come forward and ask for re-investment of the security in hand, (f). Sec. 32 of the L. A. Act invests the Court with certain powers in regard to the moneys deposited under s. 31 (2). The Section lays on the Court the duty to order the moneys deposited in the purchase of other lands, and even in the case of moneys that have been invested in Government or other approved securities, the Court is also given power to have them re-invested in the purchase of other lands. It is a judicial function which has to be performed by it, after hearing the parties and taking the necessary evidence. The Court has to be satisfied as to the propriety of the purpose, the value and title of the land before it can make an order for investment. It is no doubt true that the purchase has to be made through the Collector. The Court can refer the matter to the Collector and direct him to revise all the evidence and any information which the parties may place before him and to consider the same along with the information which he would independently obtain and to submit a report. On receipt of the report of the Collector the Court should hear the parties and pass appropriate

(c) *Mookoonda Lal Pal v. Mohamed Sami Miah*, 14 C. 484 ; *Govind Vaman v. Sakharam Ramchandra*, 3 B. 42 ; *Collector of Ahmedabad v. Lavji Mulji*, 35 B. 255 : 13 Bom. L. R. 259 : 10 I. C. 818.

(d) *Gohar Sultan v. Ali Muhammad*, 63 I.-C. 1.

(e) *Nawab Bahadur of Murshidabad v. Kumar Dinendra Mallik*, 59 Cal. 1272 : 36 C. W. N. 848 : 140 I. C. 866 : 1932 A. I. R. (Cal.) 844.

(f) *Sm. Sarala Debi v. Calcutta Improvement Tribunal*, 39 C. W. N. 169 : A. I. R. 1935 Cal. 248.

orders But the Collector's report is not final and conclusive. It is open to the Court to have the opinion of an expert taken as regards the valuation of the land, etc., if it thinks necessary ; it is open to the Court to disregard the report of the Collector and arrive at an independent valuation after consideration of the report and direct the purchase accordingly. But the Collector's opinion regarding the purchase is not the final word on the matter. The order ultimately to be passed is a judicial order made by the Court, (g).

The provisions of Sn. 32 (1) (b) are intended to be applied only provisionally and for a short period. The compensation money cannot be treated as corresponding to the corpus of land acquired and cannot be permanently invested in suitable securities leaving the parties concerned the right to enjoy its income. For such a course will be inconsistent with the principles enunciated by Sec. 32 (1) (a), (h).

Order of investment an interlocutory order :—In dealing with the acquisition of property, the Calcutta Improvement Trust Tribunal is acting as a 'court' under the L. A. Act and under s. 115 C. P. C. as well as under sec. 107 of the Government of India Act, the High Court is entitled to interfere with the order passed by the President of the Tribunal, (i). The President of the Calcutta Improvement Tribunal, acting under s. 32, is a judge and is bound to exercise his functions in a judicial manner. Where he referred the question of valuation to an outside expert and on receipt of his report, adopted it without giving the parties concerned an opportunity to examine or cross-examine him, the procedure was illegal and if it results in substantial injury, it affords sufficient ground for the High Court to interfere under sec. 115 C. P. C., (j). Under sec. 54 of the L. A. Act there is no appeal against an order of the District Judge allowing a Hindu widow to withdraw the compensation money deposited by the Collector under sec. 31 of the L. A. Act, (k).

Intending sellers no party to the proceedings :—The parties interested in the properties forming the subject-matter of investigation for investment under section 32 as prospective sellers are no parties to the proceedings under sec. 32 of the L. A. Act and the Court would be wrong in allowing them to appear before it and treating them as parties, (l). So also it has been held that an intending seller has no claim whatever to be made a party ; he is simply a vendor wishing to sell his property, (m).

(g) *Narayanan Nambudri v. Sub-Collector and L. A. Officer, Malappuram*, 46 L. W. 403 : 1937 M. W. N. 1167 ; (1937) 2 M. L. J. 429 ; 1937 A. I. R. (M) 948.

(h) *Satinder Singh v. Unrao Singh*, A. I. R. 1961 S. C. 908.

(i) *Adhar Kumar Mitra v. Sri Sri Iswar Radha Madan Mohan Jiu*, 36 C. W. N. 370 : 139 I. C. 180 : 1932 A. I. R. (Cal) 660.

(j) *Nawab Bahadur of Murshidabad v. Kumar Dinendra Mallik*, 59 Cal. 1272 : 36 C. W. N. 848 : 140 I. C. 866 : 1932 A. I. R. (Cal) 844.

(k) *Biswa Nath Sinha v. Bidhumukhi Dasi*, 19 C. W. N. 1290.

(l) *Nawab Bahadur of Murshidabad v. Kumar Dinendra Mallik*, 59 Cal. 1272 : 36 C. W. N. 848 : 140 I. C. 866 : 1939 A. I. R. (Cal) 844.

(m) *Adhar Kumar Mitra v. Sri Sri Iswar Radha Madan Mohan Jiu*, 36 C. W. N. 370 : 139 I. C. 180 : 1932 A. I. R. (Cal) 660.

Shebait's right to withdraw compensation :—Land dedicated to an Idol or to religious and charitable purposes is land belonging to the *shebait* or trustee "who has no power to alienate the same" within the meaning of the provisions of section 32 of the L. A. Act. Where a portion of the *debutter* property was acquired under the L. A. Act, and the compensation was invested in approved securities, the *shebait* is entitled to withdraw a portion of the invested funds to effect necessary repairs to the remainder of the property, as under section 32 of the Act the compensation money is placed in the custody of the Court, jurisdiction is by implication conferred upon it to deal with all questions that may arise as to the application of the funds in its custody, (n).

Receiver's right to withdraw compensation :—Certain lands belonging to a *debutter* estate having been acquired by the Calcutta Improvement Trust, the Calcutta Improvement Tribunal purporting to act under sec. 32 of the L. A. Act directed the compensation money to be invested in the purchase of lands. The compensation money had already been invested in Government securities. Some of the shebaits of the estate had instituted a suit for the better administration of the *debutter* properties and a Receiver was appointed by the High Court in the Original Side. It was held (i) that the Receiver was a person who had power to alienate the property and therefore sec. 32 of the L. A. Act had no application ; (ii) that the compensation money having been already invested in Government Securities, the Tribunal had alternatives under sub. cl. (b) either to invest the money in the purchase of lands or to pay the same to any person becoming absolutely entitled thereto and that the Receiver was a person who was absolutely entitled to the money, (o).

Succession Certificate not necessary for withdrawal of compensation :—In *Abinash Chandra Paul v. Probodh Chandra Paul* (p), it was held that a sum of money awarded in a case under the L. A. Act after the death of the owner and kept in deposit under sec. 32 of the Act is a 'debt' for which it was necessary for the reversionary heirs to take out succession certificate. The view expressed in the above case was dissented from and the question whether the compensation money for land acquired after the death of the owner when it was in the hands of his widow or a person having a life estate is a 'debt' within the meaning of sec. 214 of the Indian Succession Act XXXIX of 1925 for which a certificate under Part X of that Act has to be obtained, was referred to a Full Bench for decision in *Brojendra v. Niladri*, (q). But the Full Bench did not decide the points referred to it in clear terms. The first point was whether compensation on acquisition made after the death of the owner is a 'debt' within meaning of sec. 214 of the Indian Succession Act and whether a succession certificate would be necessary for the claim.

(n) *Kaminee Debee v. Promotho Nath Mukherjee*, 39 C. 33 : 13 C. L. J. 597 ; *Ram Prosonna Nundy v. Secretary of State*, 19 C. W. N. 653.

(o) *Adhar Kumar Mitra v. Sri Sri Iswar Radha Madan Mohan Jiu*, 36 C.W. N. 370 : 139 I. C. 180 : 1932 A. I. R. (C) 660.

(p) *Abinash Chandra Paul v. Probodh Chandra Paul*, 15 C. W. N. 1018.

(q) *Brojendra Sundar Banerjee v. Niladrinath Mukherjee*, 33 C. W. N. 1177 : I. L. R. 57 Cal. 814.

The Full Bench held that the question did not arise. It also did not approve of the reasonings given in the case of (p). The Full Bench held—

- (i) It was not necessary for the court to decide that the case is one in which a 'debt' was due to the deceased owner within reasoning of section 214 of the Indian Succession Act or that the 'debt' was due to the deceased and a claim of debt could not succeed without such a certificate.
- (ii) The reasonings given in the case of (p) is not approved and the effect is that in the circumstances of said case the money lying with Government is not a 'debt'.
- (iii) Before the L. A. Judge a succession certificate would not prevent an objector to set up his title. It is well settled that a debt is a sum ascertained, which is now or in future payable. So if a person dies after his lands are acquired the compensation awarded is not a debt and no succession certificate is necessary. But although an award made within the life time of the owner would technically be a 'debt' still the fact that the L. A. Judge is competent to decide the question of person entitled on enquiry, (r). makes further obtaining of succession certificate unnecessary.

Order for payment under section 32 an award :—In *Trinayani Dasi v. Krishnalal De*, (s), the High Court observed : "it seems, however, that these cases previously came before another Bench of this Court on a rule issued under section 115 Civil Procedure Code. The point then considered was whether or not an order passed under section 32 of the L. A. Act *was part of an award* within the meaning of section 54, and this Court held that an order under section 32 was such a part of an award within the meaning of section 54, and that the proper remedy for the petitioner in that rule was by an appeal and not by an application for revision. We see no reason to differ from the view which was taken by the learned judges in that case, and we hold that the order under section 32 of the Land Acquisition Act, must be taken to be an award or part of an award made under the Act."

Appeal lies against order of payment by Court and the court fees payable thereon :—In *Trinayani Dasi v. Krishna Lal De* (s), the question was whether an appeal lay against an order passed under section 32 and what was the correct stamp payable on the memorandum of appeal. In that case a certain *debutter* property having been acquired under the L. A. Act the compensation allowed by the Collector was deposited in Court. One J applied to withdraw the money on the ground that she was entitled to it as executrix to the will of her late husband. On objection by one K, that the money in deposit should be invested in Government securities and only the interest should be paid over to the shebait, the L. A. Judge passed an order under sec. 32 of the Act directing the payment of the interest only to the applicant. Against the order J preferred an appeal to the High Court on a court-fee stamp of Rs. 10

(r) *Mrinalini Dasi v. Abinash Chandra Dutt*, 11 C. L. J. 533 : 14 C. W. N. 1024, *Debendra Nath Dey v. Tulsi Moni Dasi*, 26 C. L. J. 123 (125).

(s) *Trinayani Dasi v. Krishnalal De*, 39 C. 906 : 17 C. W. N. 933.

only. It was held that the case came under the provisions of section 8 of the Court-Fees Act and an *ad valorem* court fee ought to have been paid ; it was held also that to bring a case under the provisions of cl. VI of Art. 17 of Schedule II of the Court-Fees Act, it must be established that it was not possible even to state approximately the money-value of the subject matter in dispute ; but where the claim to receive the full amount of compensation money was disallowed and the only relief allowed by the Court was to withdraw the interest on the said money, there it was possible to state approximately the money-value of the relief claimed and therefore in such a case the provisions of Sch. II, Art. 17, cl. (vi) of the Court-Fees Act would not apply. But on a reference under section 18 of the L. A. Act the District Judge held that one of the claimants, a Hindu widow, was entitled to a life-interest in the compensation money awarded for the melwaram, but, on account of the limited interest held by her, he, under sec. 32 of the Act, ordered the money to be invested in a bank, which was accordingly done. In an appeal filed by another claimant claiming that the compensation was payable to him alone, it was held that the proper court-fee payable on the memorandum of appeal was not a court-fee *ad valorem* on the amount of the award but a court-fee as for a mere declaration, (t).

In *Rash Behari Sanyal v. Gosto Behari Goswami*, (u), it was held that a memorandum of appeal by the reversioner against an order refusing the prayer for investment and allowing the purchaser from the Hindu widow to take the entire compensation money, falls under sec. 7 (iv) (c) of the Court-Fees Act.

Whether petition for Revision of order under s. 32 lies under s. 115 C. P. C. :—On an application made by the trustees of Devaswom under s. 32 of the L. A. Act for the investment of money in deposit in the purchase of other lands for the Devaswom, the Court acting on the report of the Collector who stated that the lands proposed to be purchased were insufficient for the amount in deposit, refused to make an order for the purchase and dismissed the application. The trustees then filed petitions for review of the order of dismissal and for an opportunity of adducing fresh evidence as to the sufficiency of the land. The Court holding that it was bound by the Collector's report declined to review the order and rejected the application. Against that rejection the trustees applied to the High Court under s. 115 C. P. Code. It was held that the revision applications against the latter orders were incompetent and that the proper procedure was to have the order dismissing the original application corrected by the High Court, (v).

No suit lies to set aside an order under section 32 :—In *Ramachandra Rao v. Ramachandra Rao*, (w), under a deed of settlement executed by one R.

(t) *Thanunayya Naidu v. Venkataramanamma*, 55-Mad. 641.

(u) *Rash Behari Sanyal v. Gosto Behari Goswami*, 62 C. 331: A. I. R. 1935 Cal. 243 : 39 C. W. N. 110.

(v) *Narayanan Nambudri v. Sub-Collector and L. A. Officer, Malappuram*, 1937 M. W. N. 1167 : 46 L. W. 403 : 1937 (2) M. L. J. 429 : 1937 A. I. R. (M) 948.

(w) *Ramachandra Rao v. Ramachandra Rao*, 45 M. 320 (P. C.) : 26 C. W. N. 713 (P. C.) : 35 C. L. J. 545.

one-half of certain properties was given to his adopted son and the remaining half was given to his two wives who were to take the same half and half. One of these properties having been acquired by Government a question arose under sec. 32 of Act I of 1894 between the adopted son and one of the wives, as to whether the latter was absolutely entitled to her share of the compensation money or whether the same was to be invested, she having no right to alienate her interest in the property under the deed of settlement. The High Court held, that by the deed of settlement the wife was intended to have a widow's estate only in the property devised. Subsequently, the wife having bequeathed her properties to respondent by will, the representatives of the adopted son instituted a suit against the claimants under the will alleging that she had a limited estate under the deed of settlement and had no power to dispose of the properties by will.

Their lordships of the Judicial Committee of the Privy Council in delivering the judgment held : "there has, in the present case, been a clear decision upon the very point now in dispute which cannot be re-opened. The High Court appears only to have regarded the matter as concluded to the extent of the compensation money, but that is not the true view of what occurred, for as pointed out in *Badar Bee v. Habib Merican Noordin* (x), it is not competent for the court, in the case of the same question arising between the same parties to review a previous decision, no longer open to appeal given by another Court having jurisdiction to try the second case. If the decision was wrong it ought to have been appealed from in due time. Nor in such circumstances can the interested parties be heard to say that the value of the subject matter on which the former decision was pronounced was comparatively so trifling that it was not worth their while to appeal from it. If such a plea were admissible there would be no finality in litigation. The importance of a judicial decision is not to be measured by the pecuniary value of the particular item in dispute. It has been suggested that the decision was not in a former suit, but whether this were so or not makes no difference for it has been recently pointed out by this Board in *Hook v. Administrator-General of Bengal*, (y) that the principle which prevents the same case being twice litigated is of general application, and is not limited by the specific words of the Code in this respect."

Section 32 (1) (b) (ii) contemplates a case where the disability has ceased or the estate vests absolutely in a full owner after the termination of a limited estate. It presupposes a valid deposit under section. 32 (1) and cannot have any reference to a case where the property is found not to belong either wholly or in part to the person in whose favour the award is made and in whose name the money lies deposited ; but is found to belong to some other person who is not a party to the award at all, (z).

The Jurisdiction of the Court to act under the section depends on the money having been deposited in Court by the Collector under sn. 31 (2) ; if the money has not been deposited in accordance with sn. 31, (2) the

(x) *Badar Bee v. Habib Merican Noordin*, L. R. 1909 A. C. 615.

(y) *Hook v. Administrator-General of Bengal*, 48 Cal. 499 : 25 C. W. N. 915.

(z) *Hemanta Kumar Banerjee v. Satis Chandra Banerji*, A. I. R. 1941 Cal. 635.

Court's jurisdiction to make any such order does not at all come into being, (a):

Power of Revision of High Court :—A decision that a Hindu widow comes within the scope of section 32 of the L. A. Act hardly partakes of the character of a decree. The order would be revisable rather than appealable, (b).

Requisitioned Land (Apportionment of Compensation) Act :—In *Fagan v. Gangubai*, (c), it was affirmed that Sn. 32 was mandatory and that the Requisitioned Land (Apportionment of Compensation) Act does not expressly modify or abrogate the provisions of the Land Acquisition Act and the power which the arbitrator exercised under sn. 3 thereof is governed by sn. 32 of the Land Acquisition Act. The provisions of Requisitioned Land (Apportionment of Compensation) Act 1949, were enacted to overcome doubts arising as to the power of the arbitrator under sn. 19 of the Defence of India Act to make an order of apportionment and that doubt has been cleared by sn. 3 of the 1949 Act stating that he had no such power.

State Amendments on Sn. 32

West Bengal.—By W. B. Act XXIV of 1964, sec. 3 :—

After section 32 of the said Act, the following section shall be inserted, namely :—

“32A. *Compensation awarded to minors and lunatics to be paid.*—If according to the award made by the Collector under this Act, the person interested entitled to any compensation or costs awarded (hereinafter in this section referred to as the payee) is a minor or a lunatic, then notwithstanding anything to the contrary in this Act or in any other law, the Collector shall have the power to pay the amount of such compensation or costs before it is deposited in the Court under sub-section (2) of section 31, or it may be paid by the court after it is so deposited but before it is invested under section 32,—

- (a) Where the payee is a minor, to the guardian of the minor, and
- (b) Where the payee is a lunatic, to the manager of the estate of the lunatic appointed under the Indian Lunacy Act, 1912 (Act IV of 1912) :

Provided that except in the case of the following classes of guardians, that is to say,

- (i) a natural guardian,
- (ii) a guardian appointed by the will or a minor's father or mother,
- (iii) a guardian appointed or declared by a Court and
- (iv) a person empowered to act as or exercise the powers of a guardian by or under any enactment relating to Court of Wards,

(a) *Sattar v. Hamida Bibi*, A. I. R. 1950 Lah. 229 (F. B.).

(b) *Parwatibai v. L. A. Officer*, I. L. R. (1945) Nag. 392 : 1945 N. L. J. 92 : A. I. R. (1945) Nag. 115.

(c) *Fagan v. Gangubai*, 1958 Nag. L. J. (Notes) 57.

no payment as aforesaid shall be made unless the guardian furnishes security in accordance with prescribed rules."

Insertion of a new Rule 9A by notification dated 2-2-67 :—"9A. Where under an award compensation money is payable to a minor, there is no guardian as specified in clauses (i) to (iv) of the proviso to section 32A of the Act, payment may be made to any other guardian of the minor provided he executes a bond agreeing duly to account for and to refund to the State of West Bengal, if demanded, what he may receive as compensation money and to indemnify the State of West Bengal against all expenses which may be incurred by the State of West Bengal in relation thereto, (see Rules under Part IV).

Investment of money deposited in other cases.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

State Amendments

West Bengal.—By W. B. Act XXIV of 1964, sec. 4 :—for the words "the last preceding section" the words and figures "section 32" shall be substituted.

Notes

This section is new, there was no corresponding section in the old Act X of 1870.

Temporary investment :—Section 33 deals with the investment of money deposited by the Collector under section 31 (2) when the claimants did not consent to receive the compensation awarded by him under section 11 or if there was any dispute as to the title to receive the compensation or as to the apportionment of it, whereas section 32 deals with as to how the money deposited by the Collector awarded by him in respect of land which did not belong to any person who had power to alienate the same, would be disposed of. The money is held in temporary deposit only pending the final decision of the dispute between the parties and the Court has ultimately to make over the money to the party to whom it is adjudged to belong. If the parties want it, the money may be invested in Government and other securities to avoid loss of interest pending final disposal of the case,

Payment of interest

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

State Amendments

1. Maharashtra.—By Bombay Act XVIII of 1938 :—for the word “six” the word “four” shall be substituted.

2. Punjab.—By Punjab Act II of 1954 :—for the word “six” the word “four” shall be substituted.

3. Madhya Pradesh.—By C. P. & Berar Act XXVII of 1939 :—for the words “at the rate of six per centum per annum” the words “at the rate which shall not be less than three per centum per annum and more than six per centum per annum” shall be deemed to be substituted.

4. Vidarbha.—same as that of Madhya Pradesh.

5. Gujarat.—same as that of Maharashtra. And *By the Land Acquisition (Gujarat Unification and Amendment) Act 20 of 1965.*

[See Part III, Chapter IV-B, (Gujarat)].

6. Madras.—By *Madras Act XII of 1953, S. 2 :—*

In section 34—

(1) For the words “six per centum” substitute the word “four per centum” ;

(2) add the following Proviso at the end of the section.

“Provided that where such possession is taken before the commencement of the Land Acquisition (Madras Amendment) Act 1953, the foregoing provision shall have effect as if for the rate of four per centum per annum specified therein, the rate six per centum per annum has been substituted”.

7. Mysore.—By the *Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961.—*

[See under Part III, Chapter X (Mysore)].

8. Bihar.—By *Bihar Act XXI of 1936, S. 2.—*

For section 34 substitute the following section, namely—

“34. *Payment of interest.*—(1) Where the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay or deposit interest thereon at the rate of six per centum per annum from the time of so taking possession until the amount shall have been paid or deposited.

(2) Such interest shall be paid or deposited on or before the 30th June, every year ; and when the amount of compensation is paid or deposited, any interest that may have fallen due subsequently shall be paid or deposited along with such amount ; Provided that, in the case of acquisition of any cultivable land, the Collector shall pay or deposit, in lieu of interest, the money value of the crops, if any, which would have been grown on the land,

if the Collector had not taken possession thereof, after deduction therefrom the cost of cultivation."

Notes

This section 34 of the Act I of 1894 corresponds to para 2 of section 42 of Act X of 1870 which ran as follows, "When the amount of such compensation is not paid on taking possession, the Collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six *per centum per annum* from the time of so taking possession."

Interest on compensation :—The rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. When property has been compulsorily acquired by the Government or a public body and possession taken by it, it must pay interest on the amount awarded as compensation from date of taking such possession, (a). In (b), it has been held that in land acquisition proceedings interest should be paid on the entire amount awarded by the Arbitrator as compensation for the property acquired, from the date of the Collector's taking of possession of the same and the date of withdrawal, if any, of any part of the said compensation, by the referring claimant and further interest at the same rate should be directed on the balance of the final award by the arbitrator until payment or deposit of the same by the Government ; it was further held that an application under Art. 227 of the Constitution is maintainable even where an appeal lies from the award under sec. 19 (1) (f) of the Defence of India Act and the Rules framed thereunder, (c). Further the contention that no interest should have been awarded at all in the instant case on the authority of the decision of the Supreme Court reported in (d), is not acceptable, in as much as, even upon that decision, in the light of earlier decision of the Supreme Court reported in *Satinder Singh v. Umrao Singh*, (e), interest would be clearly payable. Under section 31, on making an award under sec. 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by one or more of the contingencies mentioned in sub-section (2) of section 31, in which case the Collector shall deposit the amount of the compensation in Court. Therefore it follows that the payment, tender or deposit, shall in all cases follow the award and shall in all cases (except in cases of urgency under section 17) be made before taking possession of the land acquired. Even when the Collector has deposited in Court or paid the amount of compensation, the claimant is entitled, as a matter of right, to interest at 6 per cent per annum

(a) *Inglewood Pulp and Paper Co. v. New Brunswick Electric Power Commissioner*, 28 L. W. 753 : 111 I. C. 261 : 1928 A. I. R. (P. C.) 287 :

(b) *Roufannessa Bibi v. Union of India* reported in 66 C. W. N. 412.

(c) *Mamatha v. Emperor*, 37 C. W. N. 201.

(d) *Mahabir Prosad Gupta v. Durga Dutta*, A. I. R. 1961 S. C. 990.

(e) *Satinder Singh v. Umrao Singh*, A. I. R. 1961 S. C. 908,

on difference between the amount awarded and that offered by the Collector, (e¹). A claimant is entitled to interest on the amount of compensation from the date on which the collector took possession of the properties acquired up to the date on which compensation is paid or deposited, (e²). The word "deposited" in sec. 34 of the L. A. Act refers only to the actual fact of deposit, subject to the condition that such deposit must be in the proper court as is specified in sec. 31 (2). Accordingly, when the collector actually deposits the compensation money in the proper court, although in the erroneous view that there is no person competent to alienate the land, there is deposit as contemplated by sec. 34 and the Collector is not liable to pay interest under the section when the money is ultimately paid out to the person found entitled to it, (f).

The payment of interest is mandatory under Sn. 34. In *Uttar Pradesh Government v. H. S. Gupta* (g), the Supreme Court held that the claimant was entitled to interest on the additional amount awarded to him at the rate of six percent as provided in Sn. 34 in spite of various intervening proceedings, (h).

Interest becomes payable not only when there is no deposit made under sec. 31 (2) but also where the L. A. Officer does not pay the compensation money to the claimant, (i).

Possession taken before Award :—The right to receive interest takes the place of the right to retain possession. The foundation of sec. 34 L. A. Act is that when compensation is payable and has not been paid, interest for non-payment must be given from the date of taking possession. Where therefore, possession, of land is taken as an urgent case but the acquisition award is made later on, interest from the date of possession on the value of the land should be allowed, (j).

Under sec. 34 the claimant is entitled to interest at 6 per cent per anum from the time of possession by the Government until the sum or compensation is paid or deposited and the mere existence of an agreement between the parties that the claimant shall take away the materials on the land to be acquired does not disentitle the claimant to the statutory interest, unless it is shown that the consideration for that agreement was that the claimant should relinquish his statutory claim of interest, (k).

(e¹) *Rangasami Chetty v. Collector of Coimbatore*, 7 M. L. T. 78 : 5 I. C. 744 :

(e²) *Kirpa Ram Brij Lal v. Secretary of State*, 106 J. C. 909.

Ramsaran Das v. Collector of Lahore, 9 P. W. R. 1911 : 9 I. C. 228.

(f) *The Secretary of State v. Jay Narayan Chunder*, 40 C. W. N. 989 : 165 I. C. 716 : 1936 A. I. R. (Cal) 525.

(g) *Uttar Pradesh Government v. H. S. Gupta*, A. I. R. 1957 S. C. 202.

(h) *Collector v. Phani Bhusan Bose*, A. I. R. 1955 Assam 194.

(i) *Lucy Mary Agnes Saladanha v. L. A. Officer*, A. I. R. 1965 Mys. 72.

(j) *Revenue Divisional Officer Trichinopoly v. Venkatrama Ayyar*, 59 Mad. 433 : 1936 M. W. N. 114 : 43 L. W. 190 : 160 I. C. 967 : A. I. R. 1936 (Mad.) 199 : 71 M. L. J. 69.

(k) *Secretary of State v. Sital Prasad*, 19 Pat. L. T. 774 : 175 I. C. 1007 : 1938 A. I. R. Pat. 266,

PART VI

TEMPORARY OCCUPATION OF LAND

Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the ¹[appropriate Government] that the temporary occupation and use of any waste or arable land are needed for any public purpose or for a Company, the ¹[appropriate Government] may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

State Amendments

1. Bihar.—By Bihar Act XI of 1961, sec. 11 :—

In sub-section (1) of section 35 of the said Act—

(a) (i) after the words “whenever it appears to the appropriate Government” the words “or the Collector” shall be inserted ;

(ii) after the words “the appropriate Government may direct the Collector to” the words “or the Collector may” shall be inserted ;
and

(iii) after the words “for such term as it” the words “or he” shall be inserted.

(b) the following Explanation shall be added at the end, namely :—

“Explanation.—The sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees.”

Bihar.—By Bihar Act XVII of 1961, S. 3 :—

To sub-section (1) of section 35—

¹ These words were substituted for the words “Local Government” by the Government of India (Adaptation of Indian Laws) Order, 1937 and 1950,

(a) *add* the following explanation, namely,—

Explanation.—“This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees or temporary structure such as huts, pandals or sheds.”

(b) *add* the following proviso namely,—

“Provided that, whenever it appears to the Collector that on account of apprehended damage to life or property by erosion, the temporary occupation and use of such land are urgently needed for the purpose of rehabilitating displaced persons or needed by any Railway Administration for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing connection with or access to any such station, the Collector may, without any direction of the appropriate Government, procure the occupation and use the same for such term as he shall think fit, not exceeding three years from the commencement of such occupation”.

2. **Gujarat.**—same as that of Maharashtra. And by the *Land Acquisition (Gujarat Unification and Amendment) Act 20 of 1965.*—

[See under Part III, Chapter IV-B (Gujarat)].

3. **Mysore.**—By the *Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961.*—

[See under Part III, Chapter X (Mysore)].

4. **Maharashtra.**—By Bombay Act XXXV of 1953, sec. 10 :—

(1) after sub-section (1), the following sub-sections shall be inserted, namely :—

“(1A) Before issuing a direction under sub-section (1) the State Government may require the Collector to submit—

(a) a plan of the land which is needed for occupation and use :
and

(b) an estimate of the compensation that would be payable under sub-section (2) ;

and upon the issue of such requisition the Collector shall cause public notice of the substance of the requisition to be given at convenient places in the locality in which the land is situated.

(1B) After the issue of such notice, it shall be lawful for any officer either generally or specially authorised by the Collector in this behalf, and for his servants, workmen to exercise the powers conferred by sub-section (2) of section 4.

(1C) The officer authorised under sub-section (1B) shall at the time of his entry pay or tender payment for all necessary damage to be done as aforesaid, and, in the case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector and such decision shall be final.”

(2) in sub-section (2), for the words “The Collector shall thereupon” the words “upon the issue of a direction under sub-section (1) the Collector shall” shall be substituted.

Notes

This was section 43 of the old Act X of 1870, which ran as follows :—

“Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.”

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom pay to them such compensation, either in a gross sum of money or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.”

Temporary occupation :—The Select Committee in para 10 of their Report, dated 23rd March, 1898 observed : “Part VI of the Act deals with occupation of land by the Government for *temporary* purposes as opposed to permanent acquisition by the Government under the preceeding part of the Act under which the land ‘vested absolutely in the Government free from all other estates, rights, titles and interests’. In the year 1861 it was found necessary to amend the Act (IV of 1857) on two points. Act II of 1861 provided for the case of an acquisition of land needed for the construction of any road, canal or railway, and authority was given for the temporary occupation of adjacent lands not more than 100 years, and in certain cases not more than two miles from the ‘centre line’ of the same, for the purpose of taking earth or other materials for making or repairing the same, or for depositing earth etc., thereon, or for erecting temporary buildings or workshops or for the construction of temporary roads or railway. The full value of all ‘clay, stone, gravel, sand and other materials taken therefrom was to be given as agreed upon, or, in the event of any dispute, by an award, as in the case of a permanent acquisition.”

They further stated : “Part VI of the revised Bill, as of the present Act (X of 1870), concerning the temporary occupation of land permits a reference to the civil court as to the sufficiency of the Collector’s compensation. The Government of Bombay and the North Western Provinces have asked that the reference may include a question as to the apportionment of the compensation. We have adopted this suggestion.”

Procedure for temporary occupation :—Part VI of the Act provides for temporary occupation of land. The procedure is much the same as in ordinary acquisition, generally the compensation, which is really the rent, will be settled by agreement. An order from the Local Government is sufficient without any declaration under sec. 6 and the time for which the land is compulsorily leased may not exceed three years. At the expiry of the time, compensation must be paid for any damage done to the land, and if

it has been seriously damaged and the person interested in it desire this, it must be acquired permanently. Any dispute between the Collector and the person interested as to this or as to the rent to be paid must be referred by the Collector for the decision of the Court of his own motion.

Reference under section 35 :—There are certain references which the Collector is bound to make of his own motion. These are :—(1) References under sec. 30 ; (2) In the case of temporary occupation of land under Part VI of the Act where he and the person interested differ as to the compensation to be paid for the use of the land, the terms of the agreement, or the compensation to be paid when the period of occupation expires (sec. 37) ; (3) Where land under acquisition is alleged to be a part of a house manufactory or building and the Collector disputes this (sec. 49). In these cases he must make a reference without any application from the parties.—*Peterson*.

The reference under sub-sn. (3) is confined only to the sufficiency of compensation or apportionment thereof. There is no analogous procedure for hearing the reference as in Part III of this Act. Sn. 48 (3) also is not applicable to this part VI. When the decision of the court is received, the Collector has to incorporate the same in his award and then the party interested has the right to question the award under sn. 18. The section is applicable only to arable and waste lands.

'Arable land' has been held to be land which can be profitably ploughed, (a), as also land that is already cultivated, (b).

In *Secy. of State v. Abdul Salem Khan (c)*, it was held that a zamindar, the owner of the land, is entitled to cost for re-levelling the land for making it fit. He cannot claim any advance money but was allowed compensation for ouster and aforesaid further damages.

Writ petition :—In *Sonalia Ram v. P. W. D. Agra (d)*, the land acquired was restored and a compensation was awarded for damages. The petitioner made an application before the collector disputing the amount but the Collector refused to interfere. Then a review was filed but dismissed. Thereupon an application under Art. 226 of the Constitution was moved in High Court but the same was rejected on the grounds that—(1) the petitioner did not raise any dispute as to the amount awarded when a notice under Sn. 35 was sent to him and so no mandatory duty could be enforced, (2) if there is no dispute raised, petitioner had no right to ask for writ of *mandamus*, (3) *Mandamus* could not also be issued directing the opposite parties to make a reference to Court under Sn. 37 because no dispute was raised.

Power to enter and take possession, and compensation and restoration

36. (1) On payment of such compensation, or on executing such agreement or on making a reference under

(a) *Ranga Reddy v. State of Hyderabad*, A. I. R. 1953 Hyd. 26,

(b) *Durga Prosad Mukherjee v. L. A. Collector*, 61 C. W. N. 499.

(c) *Secy. of State v. Abdul Salem Khan*, I. L. R. 37 All. 347.

(d) *Sonalia Ram v. P. W. D. Agra*, 1957 All. W. R. (H. C.) 96.

section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the *[appropriate Government] shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Notes

Legislative history :—This was section 44 of the old Act X of 1870 which ran as follows :—“On payment of such compensation, or on executing such agreement, or on making a reference under section forty-three, the Collector, may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

And on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein.

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.”

Damage for temporary occupation :—When culturable land in the hands of tenants was acquired temporarily for the purpose of digging *kankar* it was held that having regard to sec. 36 of the L. A. Act, 1894, such portion of the compensation as might be awarded to the owner for the purpose of restoring the land to its original condition was not assessable *until after the term of occupation had expired*. In the circumstances of the case also this amount was not rightly assessed on the probable value of the *kankar* which might hypothetically be extracted from the land, (a).

In *Dimmeswara Dutta v. Dy. Commr. Sibsagar*, (b), arising under the Assam Land and Revenue Regulation (1886), it was held that where the annual *patta* gave the right to possess the land for one year, the interest of the *patta-holder* does not extend beyond that year and so no interest of the *patta-holder* subsists in the land acquired. The *patta-holder*

* Sub. by the A. O. 1950 for “Provincial Government”.

(a) *Secretary of State v. Abdul Salem Khan*, 37 All. 347 : 30. I. C. 245.

(b) *Dimmeswara Dutta v. Dy. Commr. Sibsagar*, A.I.R. 1954 Ass. 159.

cannot ask for renewal of the lease, nor for a notice as mentioned in the patta. The terms of Patta cannot be said to have been done away with. The temporary occupation and use of waste or arable lands which even though needed for any public purpose or for a company did not create any right in the Government beyond right of such temporary occupation thereof, A. I. R. 1946 Bom. 216 : 47 Bom. L. R. 1010 referred to.

Difference as to condition of land

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

State Amendments

Mysore.—By *The Land Acquisition Mysore (Extension and Amendment) Act 17 of 1961*.

[See under Part III, Chapter X (Mysore)].

Notes

This was S. 45 of the old Act X of 1870 which ran as follows :—"In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement the Collector shall refer such difference for the final order of the Court and on such reference, or on a reference under S. 43, the Judge sitting alone shall decide the difference referred."

PART VII

ACQUISITION OF LAND FOR COMPANIES

Company may be authorised to enter and survey

38. (1) ¹ * * * * The ² [appropriate Government] may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted ; and section 5 shall be construed as if after the words "the officer" the words "of the company" were inserted.

State Amendments

Bihar.—By Bihar Act XI of 1961, sec. 12 :—In sub-section (1) of section 38, after the word "Government" the words "or the Collector, as the case may be" shall be inserted.

Notes

Legislative history:—This was S. 46 of the old Act X of 1870 which ran as follows :—"46. Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, the Local Government may authorise any officer of a Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

In every such case section 4, shall be construed as if, for the words "for such purpose," the words "for the purpose of the Company" were substituted and section 5 shall be construed as if, after the words "the officer," the words "of the Company" were inserted."

Amendment of the section :—By sec. 2 and sch. I of the Devolution Act XXXVIII of 1920 the words "Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf" which occurred at the beginning of sub-sec. (1) of sec. 38 have been omitted. The effect of the amendment is to remove the control of the Governor-General-of-India-in-Council over the Local Governments and to transfer to such Governments the powers exercised by the Governor-General in Council.

¹ The words "subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf" were omitted from sections 38 (1) and 41 by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

² These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.

The first requisite is a notification under sec. 4(1) indicating that the land is likely to be needed for the purpose mentioned. Only after this notification can any officer or company be authorised to take action under sec. 4 (2). In sec. 38 (1) no duty of publishing the notification is imposed on the officer of a company, (a).

Company

The expression "Company" means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Act 1862 to 1890 or incorporated by an Act of Parliament or of the Governor-General in Council or by Royal Charter or Letters Patent ; and includes a Society registered under the Society Registration Act, 1860, and a registered Society within the meaning of the Co-operative Societies Act, 1912. *Vide* definition of "Company" in sec. 3 (e) *supra*.

This part of the Act takes the place of Act XXII of 1863 "a rather complicated measure of 53 sections, which had been hardly ever brought into practical effect." Mr. Strachey, when moving the Report of the Select Committee said : "That Act contained many conditions regarding the acquisition of land required for railway constructions by private persons or companies other than the guaranteed companies by which the existing railways had been made. There has been no case in which these particular provisions relating to railways had been put in force, nor was there any present probability of these being required, because no such railways were under construction, nor were any such, I believe, contemplated."

By this part of the Act land may be compulsorily acquired by Companies for works of public utility with the previous sanction of the Local Government ; but such sanction is not to be given unless after enquiry, the Local Government is satisfied that the acquisition is necessary for the construction of works of public utility and the Company execute an agreement specifying, amongst other matters (enumerated in sec. 41), the terms on which the public shall be entitled to use the work—*Beverely*. Before land can be acquired for a company, the previous consent of the Local Government is required and the Company must also execute an agreement (sec. 41). The Local Government before consenting, must hold a local enquiry (sec. 40) in order to satisfy themselves that the land is required for the construction of some work that is likely to prove useful to the public. The terms of the agreement to be executed by the Company are detailed in sec. 41. It must be published in the Gazette of India and the Local Gazette (sec. 42). These provisions do not apply in the case of railways or companies for whose work the Secretary of State for India in Council is bound by agreement to provide lands (sec. 43).

The L. A. Act, I of 1894, provides for acquisition of land, (1) for "public purposes," (2) for Companies and (3) for "Industrial Concerns" not being a Company under S. 38A. The procedure for acquisition of land for industrial concern not being a Company within the meaning of S. 3 (e) shall

be the same as for Companies (S. 38A). But Art. 31 of the Constitution prohibits compulsory acquisition for anything except a public purpose. The view that there is nothing in the Act to say that when land is acquired for a Company, it must also be for a public purpose as held in *Jhandu Lal Budh Ram v. State of Punjab*, (b) is no longer good law in view of Supreme Court decision in *Aurora v. State of U. P.* (c) followed in *Rani Bala Bhar v. State of West Bengal*, (d) (see notes under sec. 40) which cases specifically held that the purposes of the Company must be public purposes. The said decisions of the Supreme Court had its repercussion in the legislature of U. P. as also in the Indian Parliament with the sequel that the relevant section of the L. A. Act has been amended to provide for the acquisition of land for companies when such acquisition is necessary for "public purposes."

Acquisition for company must also be for public purposes :—The Land Acquisition Act, I of 1894 is an 'existing law' within the meaning of Art. 366 (10) and saved by Art. 31(5) of the Constitution of India, so that the 'provisions of this Act will prevail and will not be affected by any provision for acquisition without there being any provision for 'public purposes'. It is protected from the operation of Art. 31(2) and besides Art. 19(1)(f) is not attracted, (e). But it may be noted that even without the Constitution of India all the previous legislations dealing with the acquisition of land provided acquisition or requisition only for public purposes or for Company for constructions of work which is likely to prove useful to the public or in other words the company must have some public utility declared in express terms. The following legislations will show :—

1. Regulation I of 1824 was the first legislative measure in the line. The preamble ran as follows :—

"Where it being necessary occasionally to require the surrender of the property of individuals for purposes of general convenience to the community, it appears expedient distinctly to define the course of proceedings to be followed in such cases, in order, that works and arrangements of public utility may not be unduly impeded, and that at the same time a just and full compensation may be secured to all persons, holding an interest in the property so appropriated", Sections 9 and 10 were related to this object.

2. Act XXVIII of 1839 for Bombay—for widening public road etc.

3. Act XVII of 1850 for railway.

4. Act XLII of 1850 provided for 'more summary power (than was provided for in Reg. I of 1824 for gaining immediate possession of the land needed' for construction of Railways then in contemplation.

5. Act XX of 1852—For Madras, in the line of Reg. I of 1824.

6. Act VI of 1857—The object was "to make better provision for the acquisition of land needed for public purpose, etc."

(b) *Jhandulal Budh Ram v. State of Punjab*, A. I. R. 1959 *Punj*, 535.

(c) *Aurora v. State of U. P.*, 1962 (1) S. C. A. 182.

(d) *Ranibala Bhar v. State of West Bengal*, 62 C. W. N. 73.

(e) *Somdwanti v. State of Punjab*, (1963) 2 S. C. R. 774 ; (1963) 1 S. C. A. 548 ; A. I. R. 1963 S. C. 151 and *R. L. Aurora v. State of U. P.*, A. I. R. 1958 *All*, 872.

7. Act II of 1861—For construction for public purposes.
8. Act XVII of 1885 for mines and minerals.
9. Act I of 1894—the present Act.

All the above Acts clearly show that even for companies the acquisition must relate to some public utility or benefit. So it is wrong to suggest that in case of acquisition for company, there is no need for existence of any 'public purposes'.

The Land Acquisition (Companies) Rules

(For the Rules *vide* Part IV)

To get over the difficulties arising out of the decision given in what is known as the first Arora Case, A.I.R. 1962, S. C. 764, first an Ordinance then the Amendment Act XXXI of 1962, were passed. The Amendment Act was brought into force from July 20, 1962 with retrospective effect. The Central Government thereafter made Rules under S. 55 of the Act called the Land Acquisition (Companies) Rules which were brought into force from June 22, 1963.

Rule 4 requires the Collector to make an enquiry regarding the matters stated therein, if the land requested by the company for acquisition is not excessive, that the company has made efforts and offered reasonable price to buy the land from owners, that if the land happens to be a good agricultural land there is no other alternative land suitable for the company's purpose and the approximate amount of compensation which would be payable if the lands were acquired, the Collector after making such enquiry has to submit his report to the Government. The Government then forwards it to the Land Acquisition Committee appointed under Para 3 of the Rules and whose duty is to advise the appropriate Government on all matters relating to or arising out of acquisition of land under part VII of the Act, on which it is consulted and to tender its advise within one month from the date of its consultation. Rule 4 prohibits the Government from issuing notification under Section 6 unless it has consulted the Committee and considered the said report as also the report made under section 5A and unless an agreement with the company under section 41 has been executed.

The word 'Collector' has the same meaning in Rule 4 as in section 3 (c) by virtue of section 20 General Clauses Act.

The words 'specially appointed' in section 3 (c) simply means an officer specially appointed for specific purposes of performing the functions of a Collector.

It qualifies the word 'appointed' and means no more than that he is specially appointed to perform the functions entrusted by the Act to a Collector. It is the appointment therefore and not the person that is important, (f). In the said case one of the points urged was that when a particular land is being already used for one public purpose, in this case manufacture of 'Sagol' a building material made from lime, the said

purpose cannot be waived and the Government can not substitute in its place another public purpose. The said contention was rejected on the basis of Somawanti's case (g). (But Somawanti's case is not a clear authority on that proposition).

Industrial concern to be deemed Company for certain purposes

138-A. An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in sections 5A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.

Amendment :—Section 38A has been inserted by s. 2 of the Land Acquisition (Amendment) Act, XVI of 1933. The reasons for the insertion of this new section have been explained in the *Statement of Objects and Reasons* for the Bill to the said Act XVI of 1933 in the following terms :—

“The Land Acquisition Act, 1894 makes it possible where the previous consent of the Local Government has been obtained, to acquire land compulsorily on behalf of companies, provided that the land is needed for a work ‘likely to prove useful to the public’. The Royal Commission on Labour have recommended that the Act be so amended as to enable land to be thus acquired when it is needed for the housing of labour, either by companies or by other employers. They stated that, in a number of instances brought to their notice, land eminently suitable for the development of housing schemes had been held at ransom by the owners, fantastic values being placed upon it as a result of the construction of factories and other industrial concerns in the neighbourhood. The provision of adequate housing for workmen is one of the urgent needs of Indian industry, and the Bill seeks to give effect to the Commission's recommendations.

The Select Committee in their Report made the following remarks : (1) Considerable apprehension has been expressed that extension of the definition of Company to include concerns owned by individuals might lead the Act being used in favour of mushroom concerns. In order to provide a safeguard we have limited the application of the new section 38A to industrial concerns employing at least 100 workmen ; (2) We have also made it clearer that land may be acquired for the purpose of providing sanitation, sewage, and other services at any time ; (3) The words “so far

(g) *Somawanti v. State of Punjab* (1963) 2 S. C. R. 774 : A. I. R. 1963 S. C. 151.

¹ This section was inserted by s. 2 of the Land Acquisition (Amendment) Act, 1933 (16 of 1933).

as concerns the acquisition of such land” which we have inserted are designed to place it beyond doubt that the extension of the Act to concerns not being companies is strictly limited to schemes connected with housing and does not cover acquisition for works likely to prove useful to the public.

So an ‘Industrial Concern’ within the meaning of this Act is a concern that is (1) industrial, (2) employs not less than one hundred workmen, (3) not a company within the meaning of the Section 3(e) of the Act and (4) governed by one or more individuals and land may be acquired when, (5) required for erection of dwelling houses for workmen, (6) or for provision of other amenities viz., sanitation, sewage, health etc., for workmen.

In order to safeguard against the Act being used for interested individuals or mushroom concerns, the application of the Act, so far as small industries are concerned, is limited in scope for their benefit. No question of public purpose other than those stated above, are necessary, for acquisition.

Previous Consent of Appropriate Government and Execution of Agreement Necessary

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of ¹[appropriate Government], nor unless the Company shall have executed the agreement hereinafter mentioned.

State Amendments

1. Uttar Pradesh.—By U. P. Act XXII of 1954.—The existing section 39 is renumbered as sub-section (1) and sub-section (2) is added thereafter thus—

(2) In cases of acquisition of land for a Society registered under the Societies Registration Act, 1860, sub-section (1) shall have effect as if for the words and figures “sections 6 to 37. (both inclusive)” the words and figures “Sections 6 and 7” had been substituted.

2. Bihar.—By Bihar Act XXXIV of 1956, S. 9, section 39 shall be renumbered as sub-section (1) of that section and in the said sub-section as so renumbered, after the word “Government” insert the words “or Collector, as the case may be.” After the said sub-section *add* the following sub-section, namely—

“(2) In cases of acquisition of land for societies registered under the Societies Registration Act, 1860, sub-section (1) shall have effect as if for the words, figures and brackets “sections 6 to 37. (both inclusive)” the words and figures “sections 6 and 7” were substituted.

¹ The words were substituted for the words “Local Government” by the Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.

3. **Gujarat.**—*By the Land Acquisition (Gujarat Unification and Amendment) act 20 of 1956.*

[See under Part III, Chapter IV-B (Gujarat)].

Notes

This was section 47 of Act X of 1870 which ran as follows :—"The provisions of sections 6 to section 45 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government and unless the Company shall have executed the agreement here-in-after mentioned."

Conditions precedent to the acquisition for a Company :—This section provides that steps for acquisition for a Company will not be initiated unless and until the Local Government is satisfied as to the necessity of the acquisition for public purposes and the Company has executed an agreement as laid down in sec. 41.

In case (a) it was held that admittedly no agreement was executed by the Company under section 41 in favour of the Government, the notification under sections 6 to 17 was in clear violation of the provisions of section 39, and it was also not open to Government in cases of urgency to apply provisions of section 17(1) and (4) as it would be contradictory.

Previous enquiry

40. (1) Such consent shall not be given unless the ¹[appropriate Government] be satisfied, ²[either on the report of the Collector under section 5A, sub-section (2), or] by an enquiry held as hereinafter provided,—

³[(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

⁴(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose ; or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to public.].

(a) *Ranjan Singh v. State*, A. I. R. 1959 All. 635.

¹ These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.

² These words and figures were inserted by s. 9 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

³ These clauses were substituted by sn. 3 of the Land Acquisition (Amendment) Act, 1933 (16 of 1933) for the original clauses.

⁴ This clause was added by sn. 3 of the Land Acquisition (Amendment) Act, 1962 (31 of 1962) published on 12th Sep, 1962.

(2) Such enquiry shall be held by such officer and at such time and place as the ¹[appropriate Government] shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

State Amendments

1. **Bihar.**—By *Bihar Act 34 of 1956, S. 10.*—

In section 40 after the word "Government" occurring at both places insert the words "or Collector, as the case may be".

2. **Gujarat.**—By the *Land Acquisition (Gujarat Unification and Amendment) Act 20 of 1956*—

[See under Part III, Chapter IV-B, Gujarat (2)].

Notes

This was section 48 of the old Act X of 1870 which ran as follows :—

48. "Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided—

(1) that such acquisition is needed for the construction of some work, and

(2) that such work is likely to prove useful to the public. Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

Such officer may summon and enforce attendance of witnesses, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court."

Sub-section (1) :—Section 40 as it originally stood constituted the Government as the custodian of public interests, the sole judge of the two facts mentioned therein, namely, whether the land is required for the construction of some work, and secondly, whether the work is likely to prove useful to the public. The Court was not competent to question the validity of the proceedings under section 40 of the Act, neither it was open to the Court to discuss the sufficiency of the enquiry made by the Collector or his qualifications. The Local Government was the sole judge. In making an acquisition the wishes of the owner of the land were wholly irrelevant under the Act. There is no definition of a "public purpose" in the L. A. Act nor any limitation regarding what is likely to prove useful to the public, both matters were left to the absolute discretion of the Local Government and it was not competent for the Court to assume to itself the jurisdiction to impose

¹ Substituted by *Adaptation of Laws Order, 1950*, for "Provincial Government."

restrictions on this discretion by holding, that in an enquiry under section 40 of the Act, the person whose land is intended to be acquired, should have an opportunity to appear and object, (a). L. A. Court gets jurisdiction only on a reference being made to it by the Collector, and its jurisdiction is confined to disposing of the matter so referred. It has no jurisdiction under the Act to consider the legality of the acquisition or of the reference, (b). But this extreme view is no longer the law since the advent of the Constitution of India and as is discussed below.

Amendment of the section and its effect :—Section 40 (1) has been amended by insertion of the words “either on the report of the Collector under section 5A, sub-section (2) or” after the word “satisfied” by Act XXXVIII of 1923 and the effect of the amendment is that any person interested in any land which has been notified under section (4) sub-section (1) as being needed or likely to be needed for a public purpose or for a Company, may within 30 days after the issue of the notification, object to the acquisition of the land or of any land in the locality. Every objection, so made, shall be made in writing and the Collector shall give the objector an opportunity of being heard and shall after hearing all such objections and after making such further enquiry as he thinks necessary, submit the case for the decision of the Local Government and the decision of the Local Government on the objections shall be final. In view of the amendments made by Act XXXVIII of 1923, the views expressed in *Ezra v. Secretary of State* (a), that “a declaration under section 6 of the L. A. Act made with a view of acquiring land for a company is not to be considered void, merely because the previous enquiry held under section 40 of the Act was conducted in the absence of the owner and without his knowledge” have to be modified.

The section has been further amended by section 3 of the Land Acquisition (Amendment) Act, XVI of 1933 by substituting the present clauses (a) and (b) to sub-section (i) in place of the original clauses (a) and (b) which ran as follows : “(a) that such acquisition is needed for the construction of some work, and (b) that such work is likely to prove useful to the public.” This amendment was necessary in view of the enactment of the new section 38A in the Act.

Further amendments were made by Land Acquisition (Amendment) Ordinance 1962 which was replaced by Amendment Act No. 31 of 1962.

Recently in *R. L. Aurora v. State of Uttar Pradesh* (c), the point was in what circumstances can land be acquired for the purpose of a company and depended upon the interpretation of Sn. 40 of the Act. A certain plot of land belonging to the appellant was sought to be acquired for an engineering company which required the land for the purpose of erecting a factory for manufacture of textile machine parts. The majority of Judges who heard the appeal have held that sections 40 and 41 must be read together and that these sections contemplate that the public should have a right to use directly

(a) *Ezra v. Secretary of State*, 30 Cal. 36 : 7 C. W. N. 249.

(b) *Ramamurthi v. Special Deputy Collector, Vizagapatam*, 1926 M. W.N. 968 : 99 I. C. 530 : 1927 A. I. R. (M) 114.

(c) *R. L. Aurora v. State of Uttar Pradesh*, (1962) 1 S. C. A. 182.

the work proposed to be constructed on the land and not the products of it, such as textile machine parts in this case, and that giving access to the public to the factory for the purpose of doing business with the company *i. e.*, buying machine parts etc., is not such use of the work as would justify the acquisition of land. In their view any company will be producing something or other which the public may need to purchase and the Land Acquisition Act does not contemplate that the Government should be made a general agent for companies to acquire land for them in order that they may earn private profit. On the other hand Sarkar J., in a dissenting judgment held that land can be acquired for a company even though the work as such cannot be directly used by the public, such as in case of manufacture of drugs etc. In his view every item of consumers' goods will be useful to public. In the opinion of some, sections 40 and 41 contemplate what are commonly and very well understood to be public utility concerns *e. g.*, water works, gas supply and other services to the community. Possible interpretation would be that the work must be useful to the public in the sense that it is supplying some service to the community and not merely producing goods which may be needed by the public, (d). Subsequent to this decision this section has been amended to provide for the acquisition of land for companies when such acquisition is necessary for "public purposes." Principally sections 40 and 41 of the Act are amended by the Land Acquisition (Amendment) Act 1962 and in sn. 40 the new clause (aa) is added by the said Amending Act of 1962 on 12th September 1962 after the decision in *Aurora's* case was announced.

The effect of amendment of sn. 40 seems to be that it includes acquisition for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose but which may not have actually started. The satisfaction to the question that a company intends to engage itself in future in any industry or work which is for a public purpose, also is reserved for the Government to itself which cannot be challenged unless some *mala fides* are proved.

So far as the question of 'public purpose' is concerned, position as envisaged by the Supreme Court in *Aurora's* case, (c) seems to be that so long the satisfaction of the Government as to whether the purpose for which the land was acquired was for a public purpose or not, was final and could not be challenged but now the same has been held to be justiciable, *Jhandulal v. State of Punjab*, (d¹), and it is more so because no attempt was made to define the words 'public purpose' in the Act even after *Aurora's* case.

In *Amarendra v. State of West Bengal* (e), on the question of conclusiveness of the declaration as to the purpose of acquisition, the Calcutta High Court held that in the absence of proof of bad faith, sub-sn. (3) of sn. 6 comes into play *i. e.*, the declaration is conclusive evidence that the acquisition is for a public purpose and contribution of a token sum viz.

(d) *Ranibala Bhar v. State of West Bengal*, 62 C. W. N. 73.

(d¹) *Jhandulal v. State of Punjab*, A.I.R. 1961 S. C. 348

(e) *Amarendra v. State of West Bengal*, 67 C. W. N. 647.

Rs. 10/- only towards compensation of about Rs. one lac was held to be a sufficient compliance with law, not on the facts but on the general ground that the smallness of the contribution "will not necessarily give rise to the inference that the acquisition proceedings have been colourable."

But the latest decision of the Supreme Court on the point is that of *Somawanti v. State of Punjab* (f), where also the questions that fell to be decided were whether a declaration by the Government that the land was needed for a public purpose was conclusive and the court was precluded from going into the question whether the declared purpose is a public purpose or not ; and also the contribution of a token sum of Rs. 100/- sanctioned to be paid out of about Rs. 4 lacs, whether satisfies the requirements of law. The Supreme Court held that the "the declaration of the Government must be relatable to a public purpose" and the issue whether the declared purpose is relatable to a public purpose or not would be a justiciable issue. In effect there is no deviation from the decision of *Aurora's Case*. But in *Aurora's Case* manufacture of textile machine parts was held not to be a public purpose while in *Somawanti's Case* it was held that manufacture of refrigerator equipments is a 'public purpose' because they help in preservation of fruits and food stuff. This part has created a confusion. It is still now uncertain as to what really are the criteria of 'public purpose'. On the second question, it held that unless mala fide is proved, contribution of a token sum would be sufficient compliance with law. This undoubtedly has placed the owners of land in a precarious situation.

Scope of the section :—The section provides that no consent of the Local Government shall be given to the proposed acquisition unless the Local Government is satisfied by an enquiry that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public. The Hon'ble Mr. Bliss, in introducing the Bill, said : "It is not intended that the Act shall be used for the acquisition of land for any Company in which the public have a mere indirect interest, and of the works carried out by which the public can make no direct use. The Act cannot therefore be put in motion for the benefit of such a company as a spinning or weaving company or an iron foundry, for although the works of such companies are distinctly 'likely to prove useful to the public', it is not possible to predicate of them 'the terms on which the public shall be entitled to use them' a condition precedent to the acquisition of land. It is important both that the public should understand that the Act will not be used in furtherance of private speculations; and that the Local Government should not be subject to pressure which might sometimes be difficult to resist on behalf of enterprises in which the public have no interest."

Application of Art. 226 of Constitution :—In cases under S. 40 of the Land Acquisition Act and similar provisions in other enactments which have the consideration of any matter to the subjective satisfaction of the Government, it is not open to the Court to scrutinise the satisfaction or to examine whether there were sufficient materials to justify such satisfaction, (g).

(f) *Somawanti v. State of Punjab*, (1963) 1 S. C. A. 548.

(g) *Ezra v. Secy. of State*, 30 Cal. 36 (P. C.) ;

But if it is established that Government has acted mala fide or arbitrarily, then it would be open to Court to interfere, (h). But in *Jhandulal v. State of Punjab*, (i), Supreme Court has held that the question of 'public purpose' is justiciable.

Agreement with Appropriate Government

41. ¹ * * * If the ²[appropriate Government] is satisfied ³[after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an enquiry under section 40] that ⁴ * * * ⁵*the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40* it shall ^{4a} * * * require the Company to enter into an agreement ³[with the ²appropriate Government] providing to the satisfaction of the ²[appropriate Government] for the following matters, namely :—

(1) the ⁴[payment to the appropriate Government] of the cost of the acquisition.

(2) the transfer, on such payment, of the land to the Company.

(3) the terms on which the land shall be held by the Company.

⁵[(4) where the acquisition is for the purpose of erecting, dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which, the dwelling houses or amenities shall be erected or provided ; and

⁶(4A) *Where the acquisition is for the construction of any building or work for Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, the building or work shall be constructed or executed ; and*

(h) *Ranibala Bhar v. State of West Bengal*, 62 C. W. N. 73.

(i) *Jhandulal v. State of Punjab*, A. I. R. 1961 S. C. 348.

¹ Certain words were omitted by s.10 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

² These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 and 1950.

³ These words and figures were inserted by Act 38 of 1923, s. 10.

⁴ These words were omitted by s. 4 of the Land Acquisition (Amendment) Act, 1962 (31 of 1962).

^{4a} These were omitted by Devolution Act 1920 (38 of 1920).

⁵ These clauses were substituted by s. 4 of the Land Acquisition (Amendment) Act, 1933 (16 of 1933), for the original clauses, (a) and (b).

⁶ These words were inserted by sn. 4 of the Land Acquisition (Amendment) Act, 1962 (31 of 1962). Published on 12.9.62

- (5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.]

State Amendments-

Gujarat.—By the *Land Acquisition (Gujarat Unification and Amendment) Act 20 of 1965.*

[See under Part III, Chapter IV-B, Gujarat (2)].

Notes

This was section 49 of the old Act X of 1870 which ran as follows :—

“Such officer shall report to the Local Government the result of the enquiry, and if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for following matters, namely :—

- (1) The payment to the Government of the cost of the acquisition :
- (2) the transfer, on such payment, of the land to the Company :
- (3) The terms on which the land shall be held by the Company :
- (4) The time within which, and the conditions on which, the work shall be executed and maintained ; and
- (5) The terms on which the public shall be entitled to use the work”.

Amendments

Section 41 prior to the Land Acquisition (Amendment) Act, 1962 ran as follows :—

“Agreement with Appropriate Government

41. * * * If the [appropriate Government] is satisfied [after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an enquiry under section 40] that [the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that] the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall * * require the Company to enter into an agreement [with the (appropriate Government)],

providing to the satisfaction of the [appropriate Government] for the following matters, namely :—

- (1) the [payment to the (appropriate Government)] of the cost of acquisition ;
- (2) the transfer, on such payment, of the land to the Company ;
- (3) the terms on which the land shall be held by the Company ;
- [(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided ; and
- (5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work.]”

By the Government of India (Adaptation of Indian Laws) Orders, 1937 and 1950 the words “appropriate Government” have been substituted for *Secretary of State*, and “appropriate Government” for “Government”. By section 10 of Act XXXVIII of 1923, the words “such officer shall report to the Local Government the result of the enquiry, and,” which occurred at the beginning of the section have been omitted and after the word “satisfied” the following words have been inserted namely :—“after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an enquiry under section 40”. And by the Devolution Act XXXVIII of 1920 the words “subject to such rules as the Governor-General of India in Council may from time to time prescribe in that behalf” which occurred before the words “require the the company” have been omitted.

A further amendment has been introduced by section 4 of the Land Acquisition (Amendment) Act, XVI of 1933 by insertion of the words “the purpose of the proposed acquisition.....directly connected therewith, or that” after the word “that” where it first occurs in the section, and by substituting the present clauses (4) and (5) in place of the original clauses (4) and (5) which ran as follows : “(4) the time within which, and the conditions on which the work shall be executed and maintained ; and (5) the terms on which the public shall be entitled to use the work.” These latter amendments under Act XVI of 1933 were consequential on the insertion of the new section 38A in the Act.

Further amendments were made in sec. 41 by virtue of the Land Acquisition (Amendment) Act 1962 (31 of 1962) by sec. 4 of the Amending Act which deletes the words “[the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that] the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public” and substitutes for them “the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40” and in clause 4 after the word ‘and’ occurring at the end shall be inserted, namely :—“(4A) where the acquisition is for the construction of any building

or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, the building or work shall be constructed or executed ; and”.

Effect of the amendments :—From the changes introduced in the section by the Devolution Act XXXVIII of 1920 and by the Amending Act XXXVIII of 1923, it is incumbent both upon Collector or any other officer entrusted with the enquiry under section 40, and also on the Local Governments to consider the objection if any, of the persons whose lands are acquired. Hence the view in *Ezra v. Secretary of State* (a), that Act I of 1894 is *sui generis* in its character and vests the Local Governments with absolute discretion in the matter of acquisition irrespective of any consideration of the willingness or unwillingness of the owner to part with his property, and that the owner's objections are limited to the amount of compensation and matters connected therewith etc., has to be modified.

Section 41 of the L. A. Act makes the Government the sole judge of the manner in which the public are to have the use of the land taken up. *Ezra v. Secretary of State*, (b). A Civil Court has no jurisdiction to entertain a suit for an injunction to restrain a District Municipality from acquiring through the medium of the Government under the L. A. Act, 1894, a plot of land for the purpose of widening a street way, (c). *For Form of the Agreement, vide From No. VII in Model Forms, infra.*

The effect of amendment by the Land Acquisition (Amendment) Act 1962 (31 of 1962) is already discussed under sec. 40 and that according to Aurora's case (1962) S. C. A. 182, both sections 40 and 41 should be read together.

Further by virtue of said amending Act of 1962 the new amendments are given retrospective effects by virtue of sc. 7 of the Amending Act validating certain acquisitions. Sec. 7 of the Amending Act runs as follows :—

“7. Notwithstanding any judgment, decree or order of any Court, every acquisition of land for Company made or purporting to have been made under Part VII of the principal Act before the 20th day of July 1962, shall in so far as such acquisition is not for any of the purposes mentioned in clause (a) or clause (b) of sub-section (1) of sec. 40 of the principal Act, be deemed to have been made for the purpose mentioned in clause (aa) of the said sub-section, and accordingly every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of sections 40 and 41 of the principal Act, as amended by this Act, were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was entered or action was taken.”

Explanation.—In this section “Company” has the same meaning as in clause (e) of section 3 of the principal Act, as amended by this Act.”

(b) *Ezra v. Secretary of State*, 30 C. 36 : 7 C. W. N. 249.

(c) *Shastri Ramchandra v. The Ahmedabad Municipality*, 2 Bom. L. R. 395.

This seems to mean that if an acquisition was made prior to 20th July 1962 not specifically for the purposes viz.—(1) for erection of dwelling houses for workmen employed, or (2) for the provision of amenities directly connected therewith, or (3) for the construction of such work which is likely to prove useful to the public, then such acquisition is not illegal or ultra-vires, inspite of any judgement decree or order but it shall be deemed that such acquisition is needed for the construction or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose and that it shall be deemed always to have been valid as if the provisions of sections 40 and 41 of the principal Act were always in force.

Right of resumption :—The Select Committee in their Report says : “In the new clause (4) of section 41 we have added further safeguards to enable Local Governments to ensure that the houses shall be properly built and used. Some of the opinions received upon the Bill when circulated mention possible difficulties connected with the resumption of land which is being misused. We consider that the Act gives adequate powers to Local Government to secure the resumption of land in such cases and we understand that it is usual to give the first option of repurchase to the original owner. In these circumstances we have not considered it necessary to make an amendment relating to this matter.”

Recently again in *R. L. Aurora v. State of Uttar Pradesh* (d), judgment dated 14th Feb. 1964 where a petition under Art. 32 of the Constitution, as a sequel to the judgment of the Supreme Court reported in *R. L. Aurora v. State of U. P.* (1962) Sup. 2 S. C. R. 149, (A. I. R. 1962, S. C. 764), was filed. The previous appeal (1962) was allowed on December 1, 1961 and the last notification under s. 6 was quashed. On July 20, 1962 the Land Acquisition (Amendment) Ordinance was promulgated. By that Ordinance sections 40 and 41 were amended and certain acquisitions of land made before the date of the Ordinance were validated notwithstanding any judgment, decree or order of any Court. The said Ordinance was replaced by the Land Acquisition (Amendment) Act No. 31 of 1962 and which was made retrospective from July 20, 1962 the date on which the Ordinance was promulgated. The present petition challenged the validity of the amendments to Sn. 40 and 41 and also the validity of S. 7 of the Amendment Act by which certain acquisitions made before July 20, 1962 were validated. It was argued with some force that all that cl. (aa) of s. 40(1) requires is that the Company for which land is being acquired should be engaged or about to be engaged in any industry or work which is for a public purpose and it is not required that the building or work, for the construction of which land is acquired should be for such public purpose. So it contravenes Art. 31(2) and 19(1)(f). Their Lordships held that the setting in which cl. (aa) appears and in the circumstances in which it came to be enacted, a literal and mechanical construction is not the only construction of this clause and that here is another construction which is a better construction and which is that the public purpose of the Company is also implicit in the purpose

(d) *R. L. Aurora v. State of Uttar Pradesh*, A. I. R. 1964, S. C. 1230.

of the building or work which is to be constructed for the company and it is only for such work or building which subserves the public purpose of the company that acquisition under cl. (aa) can be made. It is well settled that if certain provisions of law construed in one way will be consistent with the Constitution and if another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The second being better construction, the cl. (aa) cannot be said to contravene Art. 31(1), for public purpose required therein is present where land is required for the construction of a building or work which must sub-serve the public purpose of the industry or work in which the company is engaged. The clause so interpreted is not unconstitutional and the amendments are valid.

It was further held that Sn. 7 of the Amendment Act validates such acquisitions in which property has vested absolutely in Government either under Sn. 16 or Sn. 17(1) of the Land Acquisition Act. This deeming provision only provides that where the purpose does not fall within clause (a) and (b), it shall be deemed to fall under cl. (aa) and to be judged in accordance therewith. If in fact the purpose of any acquisition made before July 20, 1962, is such as does not fall within cl. (aa), the deeming provision would be of no avail. The validity under Sn. 7 is not absolute, it is conditioned by the fact that it will be as valid as if cl. (aa) was in force so that if it could not be valid even if cl. (aa) was in force and could not be justified under the terms of that clause the validity conferred by section 7 will not attach to it.

It was further held that acquisition for the purpose of cl. (aa) of section 40(1) can only be made for a Government company or a public company and can not be made for a private company or an individual. The intention is that private individuals should not have the advantage of acquiring land even though they are engaged in industry which may be for a public purpose.

Agreement for public user :—Agreement between Government and Company providing for right of public to use works and buildings of company with a provision for framing rules and regulations, is not bad because of the absence of the Rules, (a).

Publication of Agreement

42. Every such agreement shall, as soon as may be after its execution, be published¹ in the ²[Official Gazette] and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

(a) *Chirkut Tewari v. State of West Bengal*, 70 C. W. N. 1.

¹ The words "in the Gazette of India and also" were repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

² These words were substituted for the words "local official Gazette" *ibid*.

Notes

This was section 50 of the old Act X of 1870 which ran as follows :—

“Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India* and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.”

Amendment :—By the Government of India (Adaptation of Indian laws) Orders 1937, the words “in the *Gazette of India*, and also” have been omitted.

Publication of agreement :—Under section 42, the agreement made between Government and a company must appear in the *Gazette of India*, as well as in the local Official Gazette before proceedings can be taken under section 8 of the Act. Care should be taken that clear provisions are inserted in the agreement ensuring the reimbursement to Government by the company of all costs incurred by it as incidental to the acquisition and more specially of the costs of any litigation arising out of the proceedings either in the original or appellate Courts. *Board's Instructions 7, Bengal L. A. Manual*, p. 52. Publication of the agreement is necessary to notify the public of the terms on which they may utilise the work.

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies

43. The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the ¹Land Acquisition Act, 1870 (X of 1870) shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, ²[under any agreement with such Company, the Secretary of State for India in Council, the Secretary of State, ³[the Central Government or any State Government] is or was bound to provide land].

Notes

Amendments :—In section 43, by the Government of India (Adaptation of Indian Laws) Orders, 1937 the words “under any agreement between such Company and the *Secretary of State* for India in Council the Government is, or was, bound to provide land” have been omitted and the words “under any agreement with such Company, the *Secretary of State* for India in Council, the *Secretary of State* or any Government of British India is or

¹ Repealed by this Act.

² These words were substituted for the words “under any agreement between such company and the Secretary of State for India in Council, the Government is or was, bound to provide land” by the Government of India (Adaptation of Indian Laws) Order, 1937.

³ Subs. by the A. O. 1948 for “or any Government in Br. India”.

was bound to provide land" have been substituted in their place. These words were substituted for the words "or any Government in British India" by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

Where L. A. Act does not apply :—There is a distinction between the cases in which the Government enters into an agreement to acquire land for public purposes and the cases in which the Government enters into an agreement to supply a Company with lands for public purposes. In the latter cases the formalities mentioned in sections 39, 40, 41, 42, have not to be gone through, and they are dispensed with and the Government may at once proceed to acquire the land in the usual way. "In Part VII of the Act (acquisition of land for companies) two sections have been added to except from the provisions applicable to ordinary companies those Companies for which under contract with the Secretary of State, Government is expressly bound to provide land," *Para II of the Select Committee Report dated 2nd February 1893.*

In view of the provision of section 43 of the L. A. Act that part VII of the Act does not apply to the case of acquisition of land for a railway, such land is presumably acquired by the Government under the earlier sections of Act, and becomes a property of the Government and not the property of the railway company, (a)..

How agreement with Railway Company may be proved

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

Proof of agreement by Secy. of State

Vide sections 37 and 81 of the Indian Evidence Act of 1872.

• Restriction on transfer etc.

¹[44A. *No Company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with previous sanction of the Appropriate Government.*

(a) *B. N. W. Railway Co. v Muneswar Ram*, 1 L. R. (1937) All. 511 : 1937 A. L. R. 586 : 1937 A. W. R. 215 : 1937 A. L. J. 249 : 169 I. C. 666 : 1937 A. I. R. (All) 428.

¹ These were inserted by Sn. 5 of The Land Acquisition Amendment Act, 1962 (31 of 1962).

**Land not to be acquired under this Part except for
certain purpose for private companies other
than Government Companies**

44B. Notwithstanding anything contained in this Act, no land shall be acquired under this Part, except for the purpose mentioned in clause (a) of sub-section (I) of section 40, for a private Company which is not a Government Company.

Explanation.—“Private Company” and “Government Company” shall have meanings respectively assigned to them in the Companies Act 1956.]

Effect of the Amendment

Lands for a private Company cannot be acquired excepting for the purpose of erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith.

PART VIII

MISCELLANEOUS

Service of notices

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him ; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the "Indian Post Office Act, 1866, *(XIV of 1866) and service of it may be proved by the production of the addressee's receipt.

State Amendments

1. Maharashtra.—By Bombay Act XX of 1945 read with Act X of 1948 :—for the words and figures "section 4" the words, figures and letters "section 3A or 4" shall be substituted.

2. Andhra.—By Andhra Act XX of 1959 :—for the words "and service of it may be proved by the production of the addressee's receipt" in the Proviso the words "and the notice shall be deemed to be served on such person on the date on which the notice sent by registered post will, in the usual course of post, be received by the addressee" shall be substituted.

3. Gujarat.—same as that of Maharashtra.

4. Mysore.—By the *Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961.*

[See under Part III, Chapter X].

* See now Act VI of 1898.

² See now the Indian Post Office Act, 1898 (6 of 1898).

Notes

This was section 51 of the old Act X of 1870.

Service of Notice :—A notice under the L. A. Act should, whenever practicable, be served under section 45 on the person named in the notice by delivering or tendering it. It is only when the person cannot be found that service may be made in another way. The mere temporary absence from his house of the person to be served would not fall within the expression "cannot be found" used in cl. (3) of the section, (a). Service of a notice under sec. 12(2) must be made, whenever practicable, on the person named in the notice and when such person cannot be found it must be served in the manner provided in sec. 45, cl. (3) of the Act. An award was passed under section 12(1) of the L. A. Act. Notice required by section 12(2) of the Act was served on the manager of an estate for which a receiver had been appointed and there was nothing to show that the receiver had authorised the manager to accept such notice on his behalf. It was held, that the service was not valid and it was queried whether the provisions of the Civil Procedure Code relating to the service of summons apply to the service of notices under the L. A. Act by virtue of sec. 53 of the Act, (b). The Select Committee in para 11 of their Report dated 2nd February 1893 remarked : "In Part VIII of the Act we have at the instance of the Lieutenant-Governor of Bengal, empowered Collectors and Judges to serve any notices under the Act by registered letter. We think it necessary, however, expressly to require that service can be proved only by production of the addressee's receipt."

The service of notice under this Act and Rules is a matter of law and the procedure having been laid down it cannot be served in any manner selected by the officials: New methods cannot be evolved, (c).

Proof of service :—The notice may be served either by registered post or by personal service. Personal service of notice or delivery of the notice to an agent would be good service or delivery to the principal, though in fact, the notice was destroyed by the agent and never seen or heard by the principal. It was an entire mistake to suppose that the addressee must sign the receipt of the registered letter himself or that he cannot do so by the hand of another person or that if another does sign it on the addressee's behalf the presumption is that it never was delivered to the addressee himself, mediately or immediately. In *Harihar Banerjee v. Ram Soshi Rai*, (d), the Privy Council, held, that "if a letter properly directed containing a notice is proved to have been put into the Post Office, it is presumed that the letter reached its destination according to the regular course of business and was received by the person to whom it was addressed. The presumption would apply with greater force to registered letters." In (e), a notice was

(a) *Fazal Rasul v. Collector of Agra*, 17 A. L. J. 268 : 50 I. C. 70.

(b) *Papamma Rao v. Revenue Divisional Officer, Guntur*, 33 M. L. J. 472 : (1917) M. W. N. 878 : 42 I. C. 235.

(c) *Md. Sahadat Ali Gazi v. State of W. B.* 62 C. W. N. 788. *A. P. S. Karupiah Nadar v. Sp. Dy. Collector for Land Acquisition, Virudhunagar*, A. I. R. 1955 Mad. 406.

(d) *Harihar Banerjee v. Ram Soshi Rai*, 23 C. W. N. 77 : 29 C. L. J. 117.

(e) *Girish Chandra Ghose v. Kishori Mohan Das*, 23 C. W. N. 319.

given by registered post, but the letter containing the notice was returned by the Post Office, the addressee having refused to accept it. It was held that "under sec. 114 of the Evidence Act, the Court was entitled to presume that the letter containing the notice reached the defendant and the fact that the letter was returned by the Post Office as not accepted by the addressee did not destroy the presumption." A notice under section 9 of the L. A. Act may be validly served by sending by registered post to the person concerned if the Collector or Judge so directs, (f).

Penalty for obstructing acquisition of land

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

State Amendments

Maharashtra.—By Bombay Act XXXV of 1953, sec. 11 :—for the words and figure "or section 8" the words and figures "section 8 or section 35" and for the words, figures and letter "section 3A or section 4" the words, figures and letter "section 3A, section 4 or section 35" shall be substituted.

Mysore.—By Act 17 of 1961.

[See under Part III, Chapter X (Mysore)].

Magistrate to enforce surrender

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

State Amendments

Gujarat.—By Act 20 of 1965.

[See under Part III, Chapter IV-B, Gujarat (2)].

(f) *Ranchhod Lalji v. Acquisition Officer, Ahmedabad*, 46 Bom. L. R. 696 ; 218, I. C. 187 ; A. I. R. (1945) Bom. 49,

Notes

The sections 46 and 47 of the present Act I of 1894 correspond to secs. 52 and 53 of Act X of 1870 which ran as follows : "52, Whoever wilfully obstructs any person in doing any of the acts authorized by s. 4 or s. 8 or wilfully fills up, destroys, damages or displaces any trench or mark made under s. 4 shall on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month or to fine not exceeding fifty rupees, or to both.

53. If the Collector is opposed or impeded, in taking possession under this Act of any land he shall, if a Magistrate, enforce the surrender of the land to himself and if not a Magistrate he shall apply to a Magistrate or (within the towns of Calcutta, Madras, and Bombay) to the Commissioner of Police and, such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector."

Completion of acquisition not compulsory but compensation to be awarded when not completed

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

State Amendments

1. **Bihar.**—By *Bihar Town Planning and Improvement Trust Act 35 of 1951. Schedule under section 71.*

[See under Part III, Chapter III, Bihar (7)].

2. **Gujarat.**—By *Act 20 of 1965.*

[See under Part III, Chapter IV-B, Gujarat (2)].

3. **Madras.**—By *the Madras City Improvement Trust Act No. 37 of 1950. S. 73.*

[See under Part III, Chapter IX, Madras (1)].

4. **West Bengal.**—By *the Howrah Improvement Act, 1956,*

[See under Part III, Chapter XV, West Bengal (3)].

Notes

The section 48 of Act I of 1894 corresponds to s. 54 of the old Act X of 1870 which ran as follows : "54 Except in the case provided for in section forty-four, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

But whenever the Government declines to complete any acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under section four or section eight and not already paid for under section five, and shall pay such amount to the person injured."

Power of withdrawal from Acquisition in England :—The general rule is that once a notice to treat has been served upon an owner it cannot be withdrawn without the consent of the owner. (a). There are, however, exceptions to this rule : (1) Under sec. 5, sub-sec. (2) of the Acquisition of Land Act, 1919; the owner should deliver a notice of claim upon the receipt of notice to treat. This notice of claim must state the exact nature of interest in respect of which compensation is claimed and give details of the compensation claimed. The said sub-section further provides that "when such a notice of claim has been delivered the acquiring authority may, at any time within six weeks after the delivery thereof, withdraw any notice to treat which has been served on the claimant or any other person interested in the land authorized to be acquired ; but shall be liable to pay compensation to any such claimant or other person for any loss or expenses occasioned by the notice to treat having been given to him and withdrawal, and the amount of such compensation shall, in default of agreement, be determined by an official arbitrator." (2) If the promoters serve a notice to treat in respect of portion of the land belonging to an owner and the owner serves a counter-notice, under sec. 92 of the Lands Clauses Act, 1845 on the promoters requiring them to take the whole, the promoters may withdraw the notice to treat. As the promoters may not require the whole of the premises, it is considered right that they should not be compelled to acquire at great expense an extra portion of the land which is useless to them, (b).

Power of withdrawal from acquisition in India :—The Select Committee in para 12 of their Report dated the 2nd February 1893 observed : "Section 54 of the Act (X of 1870) gives to the Government or the public bodies whom it represents the power of withdrawal from land it has proposed to acquire. This power, however, must be exercised before the award is made. After award, withdrawal is prohibited whatever may be the circumstances. Experience has shown that the only occasions on which powers of withdrawal would be really useful are when an award has shown that the Government was seriously misled by an under-estimate of the value of the land. A case has been reported in which a municipality has been nearly ruined by being

(a) *Tawney v. Lynn and Ely. Ry.*, 16 L. J. Ch. 282.

(b) *Ashton Vale Iron Co. Ltd., v. Mayor of Bristol*, (1901) 1 Ch. 591.

compelled to proceed with an acquisition in which the award was inordinately in excess of the original valuation. We think, therefore, that power to withdraw should be given after, as well as before, the award, but that, if so exercised, it should only be on terms of the most liberal compensation to the owner and that, if he is dissatisfied with the Collector's offer, he should have the same rights of reference to the Judge as in case of acquisition." Sec. 48 of the Act does not apply to the case in which there is no voluntary withdrawal by the Government but the proceedings come to an end by reason of a decree declared in the proceedings invalid. In such a case the proceedings automatically dropped and the aggrieved party is left to choose his remedy in ordinary civil court. The Act does not provide a cheap remedy to such a grievance. The jurisdiction exercised by the civil court under the Act is a restricted one and the court has no right to widen it and to act in contravention of the Act, (c).

It was further held (1) that with the decree declaring the proceedings invalid the reference under sec. 18 came to an end and the L. A. Court should therefore have dropped the proceedings in the ordinary course, (2) that when the Collector was discharged from the proceedings the Government ceased to be a party to the proceedings, (3) that the necessary consequence of the decision in the civil suit declaring the proceedings invalid was to terminate that proceedings and to make the court *functus officio* and the court therefore has no jurisdiction to entertain an application for award of damages, as there was no withdrawal by the Government within the meaning of sec. 48 which contemplated only a voluntary withdrawal. The power to award compensation under sec. 48(2) was conferred on the Collector and not on the court and the court could have no jurisdiction unless the Collector in the first instance made an award and made a reference under part III of the Act and *lastly* that the order of the court having been made without jurisdiction, the court having usurped the functions of the Collector the case was pre-eminently one in which the High Court should interfere in appeal or revision under sec. 115 C. P. C. and set aside the order.

Under sec. 36 the period of possession can not exceed three years. The present section expressly makes an exception to cases coming under sec. 36 with the effect that sec. 48 does not apply to temporary occupation under Part VI of the Act. Only Secs. 16 and 17 authorise permanent possession. There can be no necessity for formal withdrawal as contemplated by sec. 48 before stage of sec. 6 at least has been reached. But where objections under sec. 5A was allowed and the Government decided not to proceed with acquisition proceedings which were duly cancelled and another proceeding in respect of another land ordered, this was in effect withdrawal in terms of sec. 48 so far as the former proceeding is concerned, (d).

Who can withdraw from Acquisition :—Where proceedings under the L. A. Act are taken on behalf of a Municipal Board, the Board has no power to withdraw from the acquisition. It is the Government alone that can with-

(c) *Municipal Committee, Nagpur v. Ratanlal*, 1938 N. L. J. 54 : 177 I. C. 958 : 1938 A. I. R. (Nag.) 169.

(d) *Mowasi v. State of U. P.*, A. I. R. 1953 All. 595,

draw from the proceedings, (e). If there is a contract between an acquiring body and the owner of the land acquired as to the price to be paid for the same there is no want of mutuality simply because by sec. 48 Government is armed with the power of withdrawal, (f).

Withdrawal from acquisition possible only before possession :—The Select Committee in para 11 of their Second Report dated the 23rd March 1893 said : “We have altered the terms of the first clause of sec. 48, which gives certain powers to Government to withdraw from a contemplated acquisition of land so as to make it clear that *this withdrawal may be made at any time before possession is taken but not afterwards*. Instances were quoted in our Preliminary Report in which the Collector was proved by the Judges’s award to have been seriously misled as to value of the land and in which the Government would not have acquired the land had it received a correct appraisalment. We think that a Government which provides compensation from the taxes of the Empire should have larger powers of withdrawal than are given by the present Act, but we are of opinion that no such power should be given *after possession has once been taken* and that each Local Government must protect itself by executive instructions to Collectors to refrain from taking possession until after the award of the Judge, in every case in which there is a material difference between the Collector and the owner as to the value of the property.”

When the Collector makes an award under s. 11 of the L. A. Act and takes possession of the land acquired, the land vests absolutely in the Government free from all encumbrances. There is nothing in law preventing Government from restoring the state of affairs which prevailed before the proceedings commenced by annulling the acquisition, but where property has once vested in the Government under sec. 16 of the L. A. Act Government can divest itself of the ownership and reconvey the same to the original owner only by a written deed. The fact that on the representation of the claimant to make a gift of a portion of the acquired land the Government withdrew from the acquisition, does not divest the Government of its ownership or revest the same in the claimant so as to entitle the claimant to create a mortgage over the same. Even if the acquired land could under such circumstances be regarded as having revested in the claimant it would have been revested only for the limited purpose of reconveying the same to the Government, (g).

Partial withdrawal from acquisition if permissible :—There is nothing in Sec. 48 L. A. Act which would suggest or indicate that it is not open to the acquiring authority to make acquisition of any portion of land in respect of which notice under Sec. 9 of the Act had been issued, (h).

Notice for withdrawal necessary :—Where the Government decides to withdraw from acquisition but no notification under section 41 (1) of the

(e) *Secretary of State v. Quamar Ali*, 16 A. L. J. 669 : 51 I. C. 501.

(f) *Fort Press Company Ltd. v. Municipal Corporation, City of Bombay*, 44 Bom. 797 : 21 Bom. L. R. 1014 : 58 I. C. 621.

(g) *Secretary of State v. Chettyar Firm*, 4 R. 291 : 98 I. C. 323 : 1927 A. I. R. (R) 14.

(h) *Secretary of State v. Mahip Shaw*, 41 C. W. N. 437.

L. A. Act is issued as required by Rule 5 of the Rules framed under the Act, it is open to the Government to proceed with the acquisition if it changes its opinion as to withdrawal. A re-notification under sections 4 and 6 of the L. A. Act, is not necessary and the acquisition would be quite lawful, (i).

Compensation on withdrawal of acquisition proceedings :—The statute provides for compensation for compulsory acquisition and also for withdrawal where there has been temporary deprivation of employment of the land by the owner in any sense. There can be no doubt whatsoever that the loss due to inability to execute plans for erection of buildings on the property subsequent to notification under sec. 4 (1), should be legitimately included in damage. Remote consequences which are not directly related to the cause should be excluded, (j). Principles applicable to compulsory acquisition will apply *mutatis mutandis* to a case of withdrawal also. A deed of reconveyance is generally executed when the land is restored.

The executive instructions relevant for the purpose will be found in West Bengal Land Acquisition Manual 1951, Pt. I, Page 94, Instruction No. 113 and the Madras Board Standing Order 90 (30) (31).

Reference :—The procedure outlined in Part III will govern a reference under sec. 48 (3). The award will be in terms of sec. 26 and there will be an appeal under sec. 54.

Acquisition of part of house or building

49. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired :

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken

(i) *Chowkaran Kelothammad Keyi v. Province of Madras*, 1946 M. W. N. 335 : 59

L. W. 245 : (1946) 1 M. L. J. 337 : 227 I. C. 369 : A. I. R. (1946) Mad. 450.

(j) *Express Newspapers Ltd, v. Madras State*, A. I. R. 1961 Mad. 59.

is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If in the case of any claim under section 23 sub-section (1) *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land the ¹[appropriate Government] is of opinion that the claim is unreasonable or excessive, it may, at any time before the collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under section 6 to 10, both inclusive, shall be necessary but the Collector shall without delay furnish a copy of the order of the ¹[appropriate Government] to the person interested, and shall thereafter proceed to make his award under section 11.

State Amendments

1. **Calcutta (Improvement).**—By *West Bengal Act 32 of 1955, S. 74*, amending *W. B. Act V of 1911*.

[See under Part III, Chapter XV, West Bengal (2)].

2. **Howrah.**—By *Howrah Improvement Act 1956, Sch. I, S. 70*.

[See under Part III, Chapter XV, West Bengal (3)].

3. **Punjab.**—By *Punjab Act IV of 1922, S. 59*.

[See under Part III, Chapter XII, Punjab (4)].

4. **Maharashtra-Vidarbha.**—same as in *C. P. & Berar Act II of 1922, S. 239*.

[See under Part III, Chapter VIII, Madhya Pradesh (3)].

5. **Madhya Pradesh.**—*C. P. and Berar Act II of 1922*.

[See under Part III, Chapter VIII, M. P. (3)].

6. **Uttar Pradesh.**—By *U. P. Act II of 1959, S. 376*.—same as Madhya Pradesh.

Notes

This was s. 55 of the old Act X of 1870 which ran as follows.—

“55. The provisions of the Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or of the building if the owner desire that the whole of such house, manufactory or building shall be so acquired.”

Sub-sec. (1) ; Owner under section 49 :—The word “owner” is not defined in the Act but an owner must be deemed to be one of the persons interested in the land being acquired (see section 3 (b) of Act I of 1894). Reading section 10 of the Act the proprietor, sub-proprietor, mortgagee, tenant or

¹ These words were substituted for the words “Local Government” by the Government of India (Adaptation of Indian Laws) Order, 1937 & 1950.

sub-tenant are all owners for the purposes of section 40. An under-tenant is admittedly interested in the acquisition of the land, which for the purposes of section 49, until the Civil Court finds otherwise, may be presumed to be part of his salt godown, (a). The expression "owner" which occurs in s. 49 of the L. A. Act is nowhere defined in the Act, and though the expression "person interested" as explained in sec. 3 (b) must obviously include "owner", the connotation of the two terms are by no means coincident. A "person interested" who can not be strictly considered as owner, can not avail himself of the rights conferred by sec. 49. The rights of a zemindar, a tenure holder, the holder of a building lease, an occupancy rayat, may conceivably fulfil the conception of ownership within the meaning of sec. 49 in certain circumstances. But each case must depend upon its own special facts. Sec. 49 L. A. Act requires that the claimant should be "owner" of the land to be acquired as well as of the house, manufactory or building of which he maintains it to be a part. Unity of ownership is a necessary pre-requisite, (b).

Scope of section 49 (1) and (2) :—It can not be held that section 49 (2) of the L. A. Act only applies to houses or buildings. Section 49(1) applies to acquiring a *part* of a house, manufactory or other buildings, and compels the Local Government to acquire the whole of the same if the owner desires it. It does not give them the option which under section 49 (2) they possess in the case of an open plot of land, (c).

Desire of the owner is material :—Although, according to English law, the promoters may not require the whole of a building for the purpose of their undertaking, they can not require the owner to sell or convey to them a part of any house or other building, or manufactory if such party is willing and able to sell and convey the whole thereof. It is customary now, and has been for many years, for special Acts to contain a proviso excluding the operation of this section, but giving the owner the right to claim for the value of the land taken, and also for damages in respect of the deterioration of the remaining portion due to severance.

In *Khairati Lal v. Secretary of State*, (d), the Government took some of the out-offices and some of the land in the appellant's compound for public purposes. The appellant had objected under section 55 (of Act X of 1870) that the Government must take the whole or none. The Judge assessing the compensation came to the conclusion that the case did not fall within section 55 of the Act. The High Court in delivering the Judgement held : "we are perfectly satisfied that the correct interpretation of sec. 55 is the same as the interpretation that has been put upon the corresponding section 92 of the Lands Clauses Consolidation Act, and that in this case, for instance, the appellant objecting, the Government could not take under compulsory powers of the Act the out-offices or that portion of the compound which they did

(a) *Krishna Das v. Collector of Pabna*, 16 C. L. J. 165 : 16 C. W. N. 327.

(b) *Province of Bengal v. Mahes Misser*, 45 C. W. N. 370 : A. I. R. (1941) Cal. 625 : 197 I. C. 365.

(c) *Special L. A. Officer, Karachi v. Hiraahand Lilaram*, I. L. R. (1941) Kar. 217 : 196 I. C. 285 : A. I. R. (1941) Sind 152.

(d) *Khairati Lal v. Secretary of State*, 11 A. 378.

take unless they took the whole : that is to say, the house with its other out-offices and appurtenances and its compound, so far as the compound was the compound of the house. The convenience of the proprietor is not the test. The proprietor is entitled to stand upon his rights and say : you shall not apply your compulsory powers at all unless you take the whole of my house."

Where it appears that there is no other place within the compound where a latrine can be built for the use of a house, it is open to the owner to insist on the whole house being acquired, (e).

If the owner does not express his desire in accordance with sec. 49 (1) he would be entitled to a payment of damages under cl. (4) of sec., 23 (1), (f).

Time for making a claim under sec. 49 :—There is nothing in section 49 requiring the claimant to put forward the claim that the whole house should be acquired at any particular stage of the proceeding. Clause (1) of section 49 cannot be relied on to show that an owner should make this kind of claim before the award is made. Section 49 does not require that an owner must, before award has been made, express his desire to have the whole of the house or building acquired, though that would be the normal procedure, and though the section provides that the owner may withdraw or modify his expressed desire before the award is made. But that does not imply that an owner, who has not made his claim prior to the award can in no circumstances make it afterwards, (g).

Limitation for filing petition of reference under section 49 :—The first proviso to section 49 says that the owner may at any time *before the Collector has made his award*, withdraw his application, and it would follow that it was equally open to him to make a substantive application for a reference at *sometime before the award was actually made*, (h).

Reference to Court by Collector :—Section 55 of Act X of 1870 was exactly the same as the first part of the first sub-section of section 49 (Act I of 1894) but sub-section (1) of section 49 of Act I of 1894 contains the following additional provision, viz.—"Provided also that if any question. . . building," and corresponds to section 92 of the Lands Clauses Consolidation Act.

Collector's power of refusal to refer under section 49 :—In *Krishna Das v. Collector of Pabna*, (i), the frontal land of a godown was acquired by L. A. Deputy Collector and the petitioner alleged that the said land was necessary for the efficient working of his godown, and accordingly he prayed that a reference might be made to the Civil Court under section 49 of the L. A. Act. He put in an application praying for a reference under section 49 on 21-9-10. The Deputy Collector thereupon held a local enquiry and rejected the petitioner's application on 22-9-10, on the grounds that the acquisition of

(e) *Secy. of State v. Narayanswami Chettiar*, 55 Mad. 391 : 1931 M. W. N. 1266 : 138 I. C. 426 : 1932 A. I. R. (M) 55.

(f) *Lakshmi Ammal v. The State of Madras*, A. I. R. 1955 Mad. 119.

(g) *Secy. of State v. Narayanaswami Chettiar*, 55 Mad. 391 : 1931 M. W. N. 1266 : 138 I. C. 426 : 1932 A. I. R. (M) 55.

(h) *Krishna Dar v. Collector of Pabna*, 16 C. L. J. 165.

(i) *Krishna Das v. Collector of Pabna*, 16 C. L. J. 165 : 16 C. W. N. 337 : 13 I. C. 470.

the land will not interfere with the business of the petitioner, if there be any and that the time for filing such petition had expired. The petitioner moved the High Court and obtained a Rule to set aside the order of the Deputy Collector dated 22-9-10. The first question that arose was whether L. A. Deputy Collector was subject to the extraordinary jurisdiction of the High Court and the High Court in delivering the judgment held : "We have been referred to the case of *Administrator General of Bengal v. The L. A. Deputy Collector, 24-Parganas, (j)* and *British India Steam Navigation Co. v. Secretary of State for India, (k)*. In the present state of the law, we can not do otherwise than follow the decision of Henderson and Mitra JJ., in the *Administrator General of Bengal v. The L. A. Collector, .* It would obviously be unjust that the Deputy Collector should refuse to obey the provision of the Act, and to provide no remedy for the correction of the mistaken action. Where the law gives a right to a party to a certain procedure, it must also be deemed to give a remedy for the rectification of any irregularities committed in that connection. Section 49 of the Act clearly leaves no option to the Collector. It says 'he shall refer the determination of such question (whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building) to the Civil Court'. We entertain no doubt that we have jurisdiction to set right the error committed by the Deputy Collector in not making a reference under section 49. The act of a L. A. Deputy Collector in making or refusing to make reference to a Civil Court under section 49 of the L. A. Act is a judicial act, the High Court can interfere with such act on the ground that the Deputy Collector is a Court when he takes such a step or refuses to take it."

When an objection is made that a piece of land proposed to be acquired under the Land Acquisition Act is a part of the objector's house, the Deputy Collector must under section 49 of the Act either acquire the whole house or refer the question to Civil Court. He has no option in the matter, (l). It has been seen in notes under sec. 19, *Supra* that the Collector under the L. A. Act has been held by the Full Bench in *Khetsi Das Gangaram v. First L. A. Collector, Calcutta, (m)*, to be neither a court nor a court subordinate to the High Court and the High Court has no jurisdiction to interfere with the order of refusal of the Collector to refer either in appeal or in revision under sec. 115 C. P. C. Applying the same principle to the case under sec. 49 it has been held that the refusal of a Collector to make a reference to the Civil Court under the second proviso to sec. 49 of the Land Acquisition Act the question whether the land proposed to be acquired did or did not form part of the petitioner's house is a ministerial Act, and the Collector does not thereby constitute himself a Court subordinate to the High Court. His order is therefore not subject to revision by the High Court, (n).

(j) *Administrator General of Bengal v. The L. A. Deputy Collector, 24-Parganas*, 12 C. W. N. 241 ;

(k) *British India Steam Navigation Co. v. Secretary of State for India*, 12 C. L. J. 505.

(l) *Saraswati Pattack v. L. A. Deputy Collector of Champaran*, 2 P. L. J. 204 : 39 I. C. 650.

(m) *Khetsi Das Gangaram v. First L. A. Collector, Calcutta*, 50 C. W. N. 758 (F. B.).

(n) *Maung Nyem v. The Collector of Mandalay*, 1938 Rang. L. R. 623.

Where an application under sec. 49 has been made by the owner it is not open to the Land Acquisition Officer to proceed to adjudicate upon that application or to dismiss that application on his own view of the matter. Under the second proviso to sub-section (1) he is bound to refer the question to the court and to refrain from taking possession of the land until that question had been determined, (o).

Part of a house, manufactory or building :—The Select Committee in their report dated 25-1-94 says—"We are of opinion that only such land should be deemed to be part of a house, manufactory, or building which it is proposed to take under the Act, *as can be held to be reasonably required for the full and unimpaired use of such house, manufactory or building.* We have, therefore, added a clause to section 49 (1) directing the Court to have regard to this question when deciding any reference which may be made to it under the section."

In *Brook v. The Manchester Sheffield and Lincolnshire Railway Co.*, (p) Cotton L. J. said :—"Although I do not at all think that we ought to construe the section liberally in favour of the landowner yet we ought to construe it reasonably and fairly, having regard, of course, to previous decision and to this, that the object and intention of this section was evidently to give a certain protection to landowners, to person whose property has been taken away from them against their will, so that no person should be required to sell a fraction only of that which ought to be regarded as unit, when he might be very materially prejudiced by having left on his hands certain fractions only of that unit, not capable of being used efficiently when one fraction of it has been taken away from it." In *Greswolde & Williams v. Newcastle-on-Tyne Corporation*, (q), the case of *Richards v. Swansea Improvement and Tramways Co.*, (r), was cited in which Cotton L. J., said : "that will be part of a house within the meaning of this Act which would pass by a conveyance of the house, although not part of the structure at all, being part of the curtilage, or land, or yard, connected with the house in such a way that it would pass within the description of the house." This definition of "house" would ordinarily include a garden let with the house. In *St. Thomas Hospital v. Charing Cross Railway Co.*, (s), Wood, V. C., said : "the word 'house' comprises at least all that would pass by a grant of a messuage. Whether the words 'with the appurtenances' are added or not, I think makes no great difference, for the word 'messuage' according to old authorities always includes not only the curtilage but also the garden."

Godowns necessary as residence for servants are part and parcel of a building [within the meaning of section 49 (1) of the L. A. Act] being a most important part of that building for the purpose of letting it out to gentlemen, as a place of residence. The acquisition of such godowns would thus be an

(o) *Deepchand v. Land Acquisition Officer*, A. I. R. 1965 Madh. Pra. 93 : 1965 Jab. L. J. 290.

(p) *Brook v. The Manchester Sheffield and Lincolnshire Railway Co.*, L. R. 2 Ch. 571.

(q) *Greswolde & Williams v. Newcastle-on-Tyne Corporation*, (1927) W. N. 375.

(r) *Richards v. Swansea Improvement and Tramways Co.*, 9 C. D. 425.

(s) *St. Thomas Hospital v. Charing Cross Railway Co.*, 30 L. J. Ch. 395.

acquisition of a part of a house contrary to the provisions of the Act, (t). Land which is not a house, manufactory or building in the literal sense and which is not reasonably required for the full and unimpaired use of a house, manufactory or building cannot be considered as part of the house, manufactory or building within the meaning of section 49 of Act I of 1894. Whether or not the land is so reasonably required is a question of fact depending upon the particular circumstances of each case, (u). A well in a mill-compound supplying the engine with water by means of a pipe is a "part of the manufactory." (v). The word "house" is not confined to land covered by a building but also includes the court-yard of the house and so much of the land appurtenant to the house as is necessary for the convenient occupation of the house, (w).

Onus :- When a public body seeks under the L. A. Act to acquire any portion of a block of buildings which is structurally connected with the main block, the onus is on that body to show that the portion is not "reasonably required for the full and unimpaired use of the house." (x).

Sub-sec. (2) ; Injurious affection by severance :-Where a portion of a holding for residential purposes was acquired by Government and it was found that the remaining portion was thereby rendered useless for such purposes, it was held, that it was of very little importance whether the whole holding formed a "house" within section 49 of the L. A. Act so as to render it obligatory on Government to acquire the whole of it in as much as compensation to the extent of the whole of the entire holding would have to be paid owing to damages caused by severance and to the property being injuriously affected by acquisition. *Sarat Chandra Bose v. Secretary of State*, (x¹). A decision by the Court under section 49 would not prevent a claimant obtaining compensation under section 23 sub-section (1) cl. (3) of the Act, (y).

Sub-sec. (3) ; Sanction of the Local Government necessary for acquisition of the whole :-A part only of a certain piece of land was notified under the L. A. Act to be acquired by railway under cl. (1) of section 49. The owners expressed a desire that the whole land should be taken and not a part. The Collector assented to the acquisition of the whole but did not consider it necessary for Government to declare its intention for acquiring the whole. An award was made, objected to and the matter was referred to the Court. There, in addition to objection relating to the amount of compensation the owner alleged that the whole proceedings were illegal and *ultra vires* as there was no notification to acquire the whole land. It was held (1) that the proceedings were illegal and *ultra vires*, (2) that the owners were not under any obligation to make the objection

(t) *Dalchand v. Secretary of State*, 43 C. 665 : 37 I. C. 11.

(u) *Nita Ram v. Secretary of State*, 30 All. 176.

(v) *Khorshedji v. Secretary of State*, 5 Bom. H. C. R. 97 (O. C.).

(w) *Nawab Mumtaz-uddowla v. Secretary of State*, 9 O. C. 311.

(x) *Venkataratnam Naidu v. The Collector of Godavari*, 27 Mad. 350.

(x¹) *Sarat Chandra Bose v. Secretary of State*, 10 C. W. N. 250.

(y) *Giles Siddon v. Deputy Collector, Madras*, 17 I. C. 117.

until the matter came before the Court and therefore there was no waiver, (z).

Decision under sec. 49 not an award but a decree :—A decision or determination under the L. A. Act which has no reference to compensation in some form or other is not an “award”. An order under section 49 of the L. A. Act is not an award and is not appealable under section 54, (a), though it has been held in *Dalchand v. Secretary of State*, (b), that an order of this nature has been dealt with in appeal on several occasions by the Allahabad High Court and by the Madras High Court, and it has never been doubted that an appeal would lie. In *Giles Siddon v. Deputy Collector, Madras*, (c), it has been held that the words “award” or “any part of the award” in section 54 of the L. A. Act do not include the decision of the Court on a reference under section 49. The decision of the Court on a reference under section 49 is not appealable. No appeal lies against a decision of the District Judge, in a reference under the L. A. Act to the effect that the Government could take only that portion of the claimant’s land which they desired to take and could not be forced to take the entirety of his holding. Such an order is a mere preliminary decision directing no compensation, (d). But in the case of the *Secretary of State v. Narayanaswami Chettiar*, (e), it has been held that the decision of the Court upon a reference under section 49 must be held to be a decree and therefore appealable. An appeal lies against an order by District Judge on a reference under the second proviso to s. 49 (1) of the L. A. Act, determining a question whether the land proposed to be acquired does or does not form part of a house or building within the meaning of Section, 49 (1), (f).

Acquisition of land at cost of a local authority or Company

50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or company shall be entitled to demand a reference under section 18.

(z) *Bhagwandas Nagindas v. Special L. A. Officer*, 17 Bom. L. R. 192 : 28 I. C. 489.

(a) *Sarat Chandra Ghose v. Secretary of State*, 46 C. 861 : 23 C. W. N. 378.

(b) *Dalchand v. Secretary of State*, 43 C. 665.

(c) *Giles Siddon v. Deputy Collector, Madras*, 17 I. C. 117.

(d) *Mulraj Khataw v. The Collector of Poona*, 21 I. C. 179.

(e) *Secretary of State v. Narayanaswami Chettiar*, 55 Mad. 391 : 131 M. W. N. 1266 : 138 I. C. 426 : 1932, A. I. R. (M) 55.

(f) *Kali Prosad v. Government of Bihar*, 24 Pat. 524 : A. I. R. (1945) Pat. 461.

State Amendments

1. **Gujarat**—By *Act 20 of 1956*.

[See under Part III, Chapter IV-B, Gujarat (2)].

2. **Mysore**—By *Act 17 of 1961*.

[See under Part III, Chapter X, Mysore].

Notes

This section corresponds to section 56 of the old Act X of 1870 which ran as follows :—

“Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Municipal Fund, or of any company, the charges incurred by the Collector in such acquisition shall be defrayed from or by such Fund or Company”.

Acquisition for the company is not by the company :—It is often contended specially in those cases in which there is a covenant to forego claim to compensation on acquisition by the Government that the acquisition for the company or local authority is acquisition by the company or local authority and not by the Government. This contention has not been accepted as correct. In *Radhanath Maity v. Krishna Chandra Mukherjee*, (a), it was argued “that the clause (the covenant) can not affect the tenant in the present case as the tenancy is not acquired either by the Government or by the municipality within the meaning of the clause.” It was held “having regard to the clear provisions of Sec. 16 of the L. A. Act this is an acquisition by the Government and therefore under the clause in question the tenant is not bound to be given any compensation which is offered on the acquisition for the improvement of Calcutta.”

When a clause contains in a patta provided that the proprietors would get the money awarded as compensation if “any land of this jama is taken by the Government for the purpose of making any embankment etc., or “embankment etc., will be constructed by the Government on the land of this jama” and part of the land was in fact notified as required to be taken by the Government at the expense of the Calcutta Corporation for a public purpose” and was eventually acquired by the Government and the Corporation started carrying out the work, the question arose if the compensation money could be awarded to the proprietors according to the afore-said terms as was done. It was held by the Privy Council that the Proprietors were entitled to the compensation money in question. That the words “constructed by Government” mean constructed by reason of the action of the Government action, *i. e.*, in acquiring the land compulsorily for the purpose of enabling the construction to be carried out and do cover a case as the present one in which this was done by the Corporation of Calcutta, (b).

(a) In *Radhanath Maity v. Krishna Chandra Mukherjee*, 40 C. W. N. 722.

(b) *Rai Harendra Lal Rai Bahadur Estate Ltd. v. Hem Chandra Naskar*, 53 C. W. N. 803 (P. C.).

Company concerned may appeal :—The Select Committee in para 13 of their Report dated the 23rd March 1893 observed : "To section 50 we have added at the desire of the Government of Bombay a clause permitting the appearance before the Collector or the Court, of the representative of a Local Authority or Company on whose behalf land is being acquired. We can not, however agree that the authority should be permitted to appeal from the Collector's award. We have not given to Government itself power to make this appeal because the Collector is only the agent of Government in the acquisition of land : his action is taken under the rules laid down for his guidance which include a preliminary valuation and these rules ordinarily provide, and ought to provide, that when the Collector finds cause to anticipate that his eventual award will substantially exceed his provisional estimate he shall stay proceedings till he receives the further instructions of higher authority. No local authority or company is compelled to proceed under the Land Acquisition Act. If it can procure land more cheaply by private negotiation it is certainly at liberty to do so but if it elects to set in motion the very special power given to Government or if the public objects, it can expect no higher privileges and powers than those given to Government itself". Under section 50 (2) the company concerned is entitled to appear in any proceeding before the Collector or Court and to adduce evidence "for the purpose of determining the amount of compensation". The reason of the provision is obvious, for the Company has to pay the compensation, (c).

Attempt to purchase by private treaty by a Local Authority or a Company, not a condition precedent :—The Land Acquisition Act does not make it condition precedent to the proceedings taken under the Act that the local authority or a Company must attempt to purchase the land by private treaty and that it has failed in the attempt. S. 52 of the Bombay Municipal Boroughs Act merely sets out an alternative mode of acquiring property by private treaty, it does not provide that the Borough should have moved and failed in the attempt, (c¹).

Company not a necessary party :—A Company or Corporation for whose benefit any land may be acquired by the Collector is not a necessary party in the proceedings and there can be no doubt that no proceeding can properly go on in the absence of the Secretary of State for India-in-Council. Under section 50 of the Act a Company or a Local Authority for whose benefit the acquisition is made may appear and adduce evidence for the purpose of determining the amount of compensation. But that is in the nature of the addition of a party simply for the purpose of watching the proceeding or assisting the Secretary of State. Such a Company or Local Authority has not the power to ask for a reference under sec. 18 of the Act neither does the Act give it the right of appeal, (c²).

Company cannot demand reference :—The Local Government acquired a plot of land for the District Board, Gujranwala, under the provisions of the L. A. Act. Objection being taken to the amount of compensation, reference

(c) *Ezra v. Secretary of State* 30 Cal. 36 : 7 C. W. N. 249.

(c¹) *Ambalal v. Ahmedabad Municipal Corporation*, A. I. R. 1968 S. C. 1223.

(c²) *The Municipal Corporation of Pabna v. Jogendra Narain Raikut*, 13 C. W. N. 116.

was made to the District Judge, who gave an award therein. An appeal being preferred against that award to the High Court on behalf of "Collector and Chairman, District Board, Gujranwala," it was contended that the Collector or Chairman, Gujranwala, was not competent to present the appeal, and it was held, that the contention must prevail inasmuch as land had been acquired by the local Government, and not by the District Board, and according to section 79 of the C. P. C. suits by or against the Government must be instituted by or against the Secretary of State-in-Council, the rule being applicable to appeals as well, (d).

The proviso to sec. 50 (2) of the L. A. Act relates only to that sub-section, that is to say, it only limits the rights of a company or local authority *qua* such company or local authority at whose cost land is acquired, but does not affect its general right as a claimant in the Land Acquisition proceedings. Accordingly, where a company at whose cost land is being acquired has itself an interest, as tenant or otherwise, in the land which is the subject of acquisition, it is a "person interested" within the meaning of Sec. 3 (b) of the Act and has a right of demanding a reference under Sec. 18. Where the Judge refuses to entertain a reference in the erroneous view that it is incompetent, in as much as the party at whose instance the reference was made had no right to demand a reference, the High Court may set right his decision under Sec. 115 C. P. C., (e).

Company can not appeal :—From Sec. 50 L. A. Act it is clear that the party for whom the land is acquired can only assist the Collector on the question of the amount of compensation to be paid to the claimant. It can not apparently assist the Collector on the question of the area acquired though this may affect the amount of compensation. The Secretary of State (now the Union of India or the Province) through the Collector is therefore a necessary party to the appeal to the High Court as well as to the proceedings before the District Judge, (f).

Exemption from stamp duty and fees

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Notes

This was s. 57 of the old Act X of 1870 which ran as follows :—"No award or agreement made under the Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fees for a copy of the same."

(d) *Collector and Chairman, District Board, Gujranwala v. Hira Nand*, 9 L. 667.

(e) *The Comilla Electric Supply Ltd. v. Messrs. East Bengal Bank Ltd.*, I. L. R. (1939), 2 Cal. 401 : 43 C. W. N. 973 : A. I. R. (1939) Cal. 669 : 186 I. C. 17.

(f) *Nihalchand v. District Board, Milanwall*, 1936, A. I. R. (Lah.) 564.

Award or agreement exempted from stamp-duty :—The Collector's award under sec. 11 has the effect of transferring the ownership of the land acquired from the owner to the Government free from incumbrances (s. 16). It is, therefore, in the nature of a "conveyance" as defined by sec. 2, Cl. (10) of the Indian Stamp Act and seems to be liable to a stamp-duty (Art. 23, Schedule I-A of the Stamp Act). An agreement also is liable to a stamp-duty of Rs. 1.50 under Art. 5, cl. (c) of Schedule 1 A of the stamp Act. By sec. 51, the Legislature has exempted the award and the agreement from payment of any stamp-duty and no person claiming under such an award or agreement shall be liable to pay any fee for the copy of the same, that is he shall be entitled to get a copy of the same free of costs.

Agreement :—Agreements referred to in this section are those mentioned in sections 36, 41 and 43 of the Act, and they are not liable to stamp duty.

Notice in case of suits for anything done in pursuance of the Act.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

State Amendments

1. Maharashtra—By Bombay Act XXXV of 1949, sec. 6 :—

After section 52 the following section shall be inserted, namely :—

"52A. Delegation.—Notwithstanding anything contained in the foregoing provisions, a collector may, subject to the general or special orders of the State Government, delegate any of his powers or functions under this Act, to any officer not below the rank of a mamlatdar or to a Land Acquisition Officer specially appointed by the State Government in this behalf."

2. Punjab—By East Punjab Act XV of 1948 :—

After section 52 the following section shall be inserted, namely :—

52A. No compensation awarded or awardable under this Act—

- (a) before it is actually paid to the person entitled to receive the same ; or
- (b) before or after it is actually paid to the person entitled to receive the same in respect of any land which is not liable under the law for the time being in force to attachment or sale in execution of a decree or order of any court, shall be liable to seizure, attachment or sequestration by process of any court, at the instance of a creditor, for any demand against the person entitled to compensation, or in satisfaction of a decree or order of any court, and, notwithstanding anything to the contrary in any law for the time being in force, neither the official assignee nor any receiver

appointed under any law shall be entitled to proceed against or have any claim on any such compensation.

3. Gujarat—By Act 20 of 1965.

[See under Part III, Chapter IV-B, Gujarat (2)].

Notes

This was s. 58 of the old Act X of 1870 which ran as follows :—"No suit shall be brought to set aside an award under the Act.

And no suit or other proceeding shall be commenced or prosecuted against any person or anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof, nor after tender of sufficient amends."

When does a suit lie :—"If a person, or a body of persons having statutory authority for the construction of works, exceed or abuse the powers conferred by the Legislature, the remedy of a person injured in consequence is by action or suit and not by a proceeding for compensation under the statute which has been so transgressed. Powers of this sort are to be exercised with ordinary care and skill and with some regard to the property and rights of others. They are granted on the condition sometimes expressed and sometimes understood that the undertakers shall do as little damage as possible in the exercise of their statutory powers"—per Lord Macnaghten, (a).

Where notice under sec. 9 of the L. A. Act, does not contain the material facts which would enable the landowner to identify the land intended to be taken up and where the land to be acquired is affected with a franchise the franchise is not described and the notice fixes less than the prescribed time to prefer claims, these being irregularities, a suit for damages for permanent injury to a ferry caused by acquisition under the L. A. Act is maintainable in the Civil Court notwithstanding an award has been made by the Deputy Collector not allowing any compensation for the ferry as it was not claimed even after a special notice. Sub-section 2 of sec. 10 of the Railways Act does not bar a suit for compensation in the Civil Court, when the Collector refuses to adjudicate upon the claim put forward by the owner. A suit will lie in the Civil Court in respect of claim for damages which could not be foreseen at the time of the proceedings, (b).

Civil Courts are not powerless to afford relief to a person aggrieved by proceedings taken in the nominal compliance with the statutory provisions. It is however, doubtful how far and in what precise mode such relief can be claimed by the Secretary of State or a Corporation for whose benefit proceedings have been taken by the Government under the L. A. Act. The expression "any person interested" in sec. 18 does not include the Secretary of State, (c). It has been held in *Sreemutty Punnabati Debi v. Raja Padmanand*

(a) *Gaekwar Sirkar of Baroda v. Gandhi Kachrabhai Kasturchand*, 7 C. W. N. 399.

(b) *Rameswar Singh v. Secretary of State*, 34 Cal. 470 : 11 C. W. N. 356 : 5 C. L. J. 669.

(c) *B. I. S. N. Company v. Secretary of State*, 38 Cal. 230 : 15 C. W. N. 87 : 12 C. L. J. 505.

Sing, (c¹) that as between the claimants *inter se* an award by the Collector under sec. 11 of the L. A. Act does not amount to an adjudication of any question regarding the apportionment of compensation adjudged under the L. A. Act. Any such question can be determined by the Civil Court.

Where no suit lies :—If a person who is interested in any land acquired under L. A. Act has any objection to the measurement made by the Collector or to the amount of compensation made by him such person must obtain a reference to the Court of Special Judge and can not litigate the matter by a suit in the ordinary courts. If the objection, however, relates to the person to whom compensation is payable or to its apportionment among the persons interested, the matter may be investigated either upon a reference to the Court of the Special Judge, or having regard to the provisions of sec. 31, cl. (2) by a suit in the ordinary courts. But although either of these two methods may be available, if he has made his choice and selected his remedy, he cannot, because he has failed in the course adopted, fall back upon the other, (*d*).

Notice when not necessary :—Sec. 52 of the L. A. Act refers to a *tortious* act done under that Act and no notice thereunder is necessary where no act has been done in pursuance thereof beyond the institution of the proceeding itself for acquiring the land, (*e*). The section is not applicable to proceedings commenced by an owner of property to restrain the Calcutta Corporation and Improvement Trust from taking further steps in some pending land acquisition proceedings, (*f*).

Limitation for suit :—A suit to recover compensation for land acquired, instituted on the *refusal of the Collector to award any compensation* under the L. A. Act, is governed by Art. 120, Schedule II (6 years) of the Limitation Act, (now 3 years under Art. 113 of Lim. Act No. 36 of 1963), the right to sue accruing either from the date of the acquisition or the refusal by the Collector to award compensation, (*g*). Land had been taken under the L. A. Act, possession having been taken by the Collector before an award was made. The Collector subsequently refused to give an award on the ground that the land belonged to the Government. More than one year after the Collector's refusal to give an award, a suit was instituted for a declaration that the land belonged to the plaintiff and for recovery of possession or in the alternative for damages for wrongful refusal of the Collector to give the award. The finding was that the land was the plaintiff's but the plea of limitation was raised. It was held that the suit was not barred by limitation. The land had vested absolutely in Government and so plaintiffs were not entitled to recover possession but could only claim damages for breach of statutory duty on the Collector's part. The suit contemplated by Art. 18 Limitation Act (1 year) is one for

(c¹) *Sm. Punnabati Debi v. Raja Padmanand Singh*, 7 C. W. N. 538.

(d) *Bhandi Singh v. Ramadhin Roy*, 2 C. L. J. 20n : 10 C. W. N. 991 ; *Jogesh Chandra Roy v. Secretary of State*, 20 C. L. J. 53.

(e) *Ezra v. Secretary of State*, 7 C. W. N. 249.

(f) *Manik Chand Mohata v. The Corporation of Calcutta and the Calcutta Improvement Trust*, 48 C. 916 : 66 I. C. 600.

(g) *Rameswar Sing v. Secretary of State*, 34 Cal. 470 : 11 C. W. N. 356 : 5 C. L. J. 669.

compensation for non-completion and that Art. does not apply to a case in which the land has vested in the Government. Art. 120 (now 113) governs the suit, (h).

Both the Articles 17 and 18 of Limitation Act 1908 are now omitted from Act of 1963, so the residuary Art. 113 (three years) is applicable in these cases. Art. 17 applied in case of acquisition for public purposes and Art. 62 of old Act now Art. 24 of Act of 1963 applies in case of recovery of compensation money in deposit, (h¹).

Code of Civil Procedure to apply to proceedings before Court

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the ¹ Code of Civil Procedure (XIV of 1882), shall apply to all proceedings before the Court under this Act.

History

This section corresponds to section 36 of the old Act X of 1870 which ran as follows :—

“The following provisions of the Code of Civil Procedure.

- (a) as to adding parties,
- (b) as to adjournment,
- (c) as to death, marriage and bankruptcy or insolvency of parties,
- (d) as to summoning witnesses and their attendance,
- (e) as to examination of parties and witness,
- (f) as to production of documents, and
- (g) as to commission to examine absent witnesses and to make local enquiries,

shall apply so far as may be, to proceedings before the court”.

Nature of jurisdiction of L. A. Court :—The Court of the Land Acquisition Judge is a court of special jurisdiction the powers and duties of which are defined by statute and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the legislature to be comprehended within the scope of enquiry before it. It was never contemplated by the statute to authorise the Land Acquisition Judge to review the award of the Collector, to cancel it or to remit to him to be recast, modified or reduced. The Court of the L. A. Judge is restricted to an examination of the question which has been referred by the Collector for decision under section 18, and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained or can not obtain any order of reference, (a).

(h) *Mantharafadi Venkayya v. Secretary of State*, 27 Mad. 535.

(h¹) 3 C. W. N. 202.

¹ See now Act 5 of 1908.

(a) *B. I. S. N. Co. v. Secretary of State*, 38 Cal. 230.

Civil Procedure Code applies to all proceedings before the court :— The word 'Court' in this section means 'Court' as defined in S. 3 (d) of C. P. Code, that is the Court of reference. The C. P. Code is to be followed in all proceedings before the acquisition Court save in so far as they may be inconsistent with the provisions of this Act. Sections 18, 21, 26, 30, 31 (2), 37, 49 (1) and 54 lay down the procedures to be followed and so provisions of Civil Procedure Code will not apply in those cases. The function of the Court commences only when there is a reference by the Collector or when there is a deposit under S. 31 (2). The application of reference of the claimant and on which reference is made by the Collector, is in the nature of a plaint and the claimant is in the position of the plaintiff, (b).

Section 53 applies only to the Court. The Collector has no power to review an order awarding compensation passed by himself as the C. P. C. does not in terms apply to the proceeding before the Collector, (c). By the expression "Court" a Collector is not included. The whole of Part VIII of the Act in which this section appears, distinguishes between orders and proceedings by or before a Collector and those by or before a Judge or Court. There is no authority that gives a Collector power to administer oath or to require verifications under this Act, (d). This section makes the Code of Civil Procedure applicable only to the proceedings before the Court hearing the reference, (e), it was held that the procedure to be adopted, by a Civil Court where a reference is made to it, should, as far as possible, be the same as that adopted in trial of ordinary civil suits, the "party interested" being treated as the plaintiff and the Collector as the defendant. Proceedings in Court under the Act have been almost entirely assimilated to those of ordinary civil suits, (f).

When Civil Procedure Code does not apply :— Under Part III of the L. A. Act the Special Land Acquisition Court has no jurisdiction to deal with objections except those which are made by persons who were parties to the proceeding before the Collector or who have since within six months applied to the Collector to make a supplementary reference in their case. The L. A. Act does not contemplate any decision by the Special Court unless reference is made by the Collector, (g). The addition of parties by the Civil Court, who have not been made parties to the reference by the Collector is wholly *inconsistent* with the L. A. Act, and therefore the Civil Court cannot add such parties to the L. A. proceedings before it, nor can it award any compensation to one who joined in the proceedings for the first time in the Court of the Special Judge, without applying to the Collector for an order of reference, (h). The words "proceedings before the Court under the Act" in section 53 of the Act I of 1894 exclude the applicability of the wide powers of appeal

(b) *Ezra v. Secretary of State*, 30 Cal. 36. *Bhandi Singh v. Ramadhin Roy*, 2 C. L. J. 359 : 10 C. W. N. 999 ; *Nilkanth v. Collector of Thana*, 22B, 802 (F. B.).

(c) *Kashi Parshad v. Notified Area, Mahoba*, 1932, A. I. R. (All) 598.

(d) *Durga Das Rakshit v. Queen Empress*, 27 C. 820.

(e) *Bansi Lal v. The Collector of Shaharanpur*, 4 A. W. N. 88.

(f) *Zamindar of Dhar v. Rana*, 53 P. R. 1906 : 103 P. L. R. 1906.

(g) *Probal Chandra Mookerjee v. Raja Peary Mohan Mukerjee*, 12 C. W. N. 987.

(h) *Mohananda Roy v. Srish Chandra Tewari*, 7 I. C. 10,

conferred on Courts by the C. P. Code. Except for section 54 of the Act, no appeal shall lie from the decision of the L. A. Judge. Proceedings by way of execution can not be had to enforce an award under Act I of 1894, (i), though an adjudication as to compensation or as to its apportionment is tantamount to a decree within the meaning of section 2 of the Civil Procedure Code, and is capable of execution, and the same is the case with a decree of the Appellate Court in appeal and the principle of restitution laid down by sec. 583 of the C. P. Code (1882) is applicable, (j).

Order IX, rr. 9 & 13 C. P. C. apply :—Section 103 of the C. P. C. (1882) corresponding to Order IX, r. 13 of the C. P. C. of 1908 applies to a reference under section 30 of the L. A. Act, the party at whose instance the reference was obtained occupying the position of the plaintiff and his opponents that of the defendants, (k). Where the pleader engaged by the former could not attend owing to his wife's illness, and another gentleman who had agreed to take up the case as his substitute was unavoidably prevented from attending the Court, and there being three cases on the day's list above the case the party himself did not anticipate that the case would be called at an early hour and so failed to be present with his witnesses at the time when the case was called, it was held that these facts combined made out a case of "sufficient cause" for the re-admission of the case but subject to conditions. The case was restored on condition of the defaulting party paying beforehand to his opponents the costs of the hearing in the day on which the case was dismissed and the subsequent cost of the application under section 103 C. P. C. and the costs of the appeal before the High Court, (l).

When, after a reference has been made to the Civil Court, the proceedings were dismissed for want of prosecution without any adjudication on the merits, a suit is not maintainable for the trial of the question involved in the reference ; but the party who seeks to have such question tried must get the proceedings revived in accordance with law, (m). In a certain L. A. suit the Collector who was the defendant failed to appear inspite of notice and the suit was decided *ex parte*. The Collector subsequently applied under Or. 9, r. 13 C. P. C. to set aside the *ex parte* decree. He admitted the receipt of the notice while out on tour and he was unable to attend the Court on the date fixed through pressure of work. One of the Judges of the Division Bench held that this was sufficient cause for his non-appearance while the other Judge held that it was not, (n).

Section 10 C. P. C. :—The Court has inherent jurisdiction to stay a

(i) *Mulambuth Kunhammal v. Acharath Tarakat*, 31 M. L. J. 327 : 5 L. W. 472 : 38 I. C. 373.

(j) *Zaminder of Dhar v. Rana*, 53 P. R. 1906 : 103 P. L. R. 1906.

(k) *Ezra v. Secretary of State*, 7 C. W. N. 249 : 30 C. 36 ; *Kishan Chand v. Jogannath Prasad*, 25 All. 133.

(l) *Behari Lal Sur v. Nanda Lal Goswami*, 11 C. W. N. 430.

(m) *Bhandi Singh v. Ramadhin Ray*, 2 C. L. J. 359 : 10 C. W. N. 991.

(n) *Mahamed v. The Collector of Toungoo*, 5 Rang. 80 : 102 I. C. 379 : 1927 A. I. R. (Rang) 150.

proceedings before the Land Acquisition Court till the disposal of a title suit etc., elsewhere, (o).

Sec. 11 Res Judicata :—See notes under section 30 *ante*. O. 1, r. 10, C. P. C. is applicable, (p).

Discovery under O. XI, r. 12, C. P. C. :—An order for discovery can be made in a case under the Land Acquisition Act under Order XI, R. 12, C. P. C., (q). When, however, the right to discovery in any form depends upon the determination of any issue or question in dispute in a matter, or it is desirable that some issue or question of law or fact or mixed question of law and fact in dispute should be determined first, the question of discovery may be reserved till after the issue or question has been determined, (r). The High Court is not powerless to set matters right when an inter-locutory order has been made without jurisdiction or under such circumstances as are likely to cause irreparable injury to one of the litigants, (s).

Power to call for records under Or. XIII r. 10 C. P. C. :—The power to call for records under order XIII, r. 10, C. P. C., is a power which is undoubtedly inherent in the Judge of a Land Acquisition Court, (t).

O. 22 C. P. C.—No abatement :—As the proceedings under S. 18 is not a suit, O. 22, C. P. C., is not applicable, but on the death of a party it is the duty of the Government to supply the names and addresses of the legal representatives to the Court for being added as a party. Proceedings do not abate, (u).

Review under Order XLVII r. 1, C. P. C. :—A L. A. Court has power to review an award passed by it under the provisions of the L. A. Act. Such power is derived from the language of section 53, wherein the words, "proceedings before the Court under the Act", are comprehensive enough to include review proceedings under sec. 114 C. P. C. A distinction should, however, be drawn between the power of a Court to alter its own order (review) and the power of another Court to alter it (appeal) and the one might legitimately be viewed as "proceedings before Court" within the meaning of section 53 of Act I of 1894, though not the other. Per Srinivasa Aiyangar J—"the decision of L. A. Court whatever may be its nature, whether passed on a reference under section 18 of the L. A. Act or under section 30 or 32, whether the dispute was between the Government and the party interested or only between the parties interested *inter se* is an award. An award of a Court can not be changed by it on review unless the power is expressly conferred by statute and the words 'proceedings before the Court under the Act in section 53 of the L. A. Act exclude the applicability to it of the provisions of the C. P. C. relating to review, though in cases where an award is made without hearing a party interested and without giving him an

(o) *Abdul Ali Ahmed v. Badruddin Ahmed*, 1924 Cal. 757; *Kalipada Banerjee v. Charubala Dasee*, 1933 Cal. 887.

(p) *Hashim Ibrahim Saleji v. Secretary of State*, 1927 Cal. 352; 31 C. W. N. 384.

(q) *Kishan Chand v. Jagannath Prasad*, 25 All. 133.

(r) *Re. Whyte Ahrens*, 26 Ch. D. 717.

(s) *B. I. S. N. Co. v. Secretary of State*, 38 C. 230; 15 C. W. N. 87; 12 C. L. J. 505.

(t) *Naresh Chandra Bose v. Hira Lal Bose*, 43 C. 239.

(u) *Abdul Hakim v. The State of Madh. Pra.* 1964 A. I. R. 171.

opportunity of being heard, the Court may have the power even apart from Order IX to change or modify the award after hearing the party interested", (v). There is nothing in the L. A. Act which forbids the application of order XLVII of the Code of Civil Procedure to proceedings under the Act, (w).

O. 41 r. 11 C. P. C. :—This provision applies. So each memorandum of appeal must be accompanied by a copy of award, (x).

Appeals in proceedings before Court

¹ [54. Subject to the provisions of the Code of Civil Procedure, 1908 (V of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to [the Supreme Court] subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908 (V of 1908), and in Order XLV thereof.]

State Amendments

Mysore—By Act 17 of 1961.

[See under Part III, Chapter X, Mysore].

Notes

This section corresponds to sections 35 and 39 of the old Act X of 1870 which ran as follows :—

“35. If the Judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision and the collector or the person interested (as the case may be) may appeal therefrom to the court of the district Judge, unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds five thousand rupees, in either of which cases the appeal shall lie to the High Court.

(v) *Mulambath Kunhammal v. Acharath Tarakat*, 31 M. L. J. 827 : 5 L. W. 472 : 38, I. C. 373.

(w) *Sakti Narain Singh v. Bir Singh*, 2 U. P. L. R. (Pat.) 50 : 1 P. L. T. 219 : 58 I. C. 510 : A. I. R. 1920 Pat 743.

(x) *Narsingh v. Secretary of State*, 1928 Lah. 263.

¹ This section was substituted by s. 3 of the Land Acquisition (Amendment) Act, 1921 (19 of 1921), for the original section.

² Substituted by A. O. 1950 for “His Majesty in Council”.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits."

"39. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof or when reference to the Court has been made under section thirty-eight, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in the manner provided for regular appeals in suits."

Amendment :—The section, as it originally stood, was—"Subject to the provision of the Code of Civil Procedure, applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or any part of the award of the Court in any proceedings under this Act." By section 3 of the Land Acquisition (Amendment) Act XIX of 1921, this section has been substituted in place of the old section. It should also be noted in this connection that by section 2 of the said Act XIX of 1921, section 26 of the L. A. Act I of 1894 has been re-numbered 26 (1), and to the said section the following sub-section has been added, namely "(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, cl. (2), and section 2, cl. (9) respectively of the Civil Procedure Code, 1908."

Further Amendment :—The words "His Majesty in Council" have been substituted by words "the Supreme Court" by Adaptation Order 1950.

Section 10 of the Abolition of Privy Council Jurisdiction Act V of 1949 provides as follows, "the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), and of any other law in force on the appointed day (10th October, 1949) relating to Indian appeals and petitions shall as from that day have effect, except in relation to the appeals and petitions referred to in Section 4, as if in the said provisions, for all references to his Majesty in Council, there had been substituted reference to the Federal Court." And Art. 133 (1) of the Constitution of India provides that "an appeal shall lie to the Supreme Court from any judgment, from any decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—(a) that the amount or value of the subject-matters of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law".

Reasons for the amendment :—Under section 39 of the old Act X of 1870 when the amount of compensation had been settled by the court and there was any dispute as to the apportionment thereof, or when a reference had been made under section 38 the Judge sitting alone had to decide the proportions in which the persons interested were entitled to share in such amount. An appeal lay from such decision to the High Court unless the Judge whose decision was appealed from was not the District Judge, in which case the

appeal lay in the first instance to the District Judge and a second appeal lay to the High Court from the judgment passed in an appeal against the decision of the Court to which the dispute was referred, (a). It is true, by section 39 of Act X of 1870, it was provided that appeal would lie to the High Court unless the Judge whose decision was appealed from was not the District Judge, in which case the appeal lay in the first instance to the District Judge; but that Act has been repealed by Act I of 1894 and section 54 of the said Act enacted: 'Subject to the provisions of the Code of Civil Procedure, applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or any part of the award of the Court, in any proceedings under this Act' and under that section the appeals lie to the High Court, (b).

In 1912, Their Lordships of the Judicial Committee of the Privy Council held in, (c). "As Lord Bramwell observed in the case of the, (d), 'An appeal does not exist in the nature of things. A right of appeal from any decision of any tribunal must be given by express enactment. A special and limited appeal is given by the Land Acquisition Act from the award of 'the Court' to the High Court. No further right of appeal is given. Nor can any such right be implied. The learned counsel for the appellants relied both on section 53 and section 54 of the Act. Section 53 enacts that save in so far as they may be inconsistent with anything contained in this Act, the provision of the Code of Civil Procedure shall apply to all proceedings before the Court under the Act. That enactment applies to an earlier stage in the proceedings and seems to have nothing to do with an appeal from the High Court. Section 54 is in the following terms:—"54. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under the Act'. That section seems to carry the appellants no further. It only applies to proceeding in the course of an appeal to the High Court. Its force is exhausted when the appeal to the High Court is heard. Their Lordships can not accept the argument or suggestion that when once the claimant is admitted to the High Court, he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of the land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its ordinary jurisdiction." In the case of *The Special Officer, Salsette Building Sites v. Dassabhai Bezonji Motivalla*, (e), which immediately followed the case of *Rangoon Botatoung Co. v. The Collector of Rangoon*, (c), it was held,

(a) *Atri Bai v. Annopurna Bai*, 9 Cal. 838 : 12 C. L. J. 409.

(b) *Balaram Bhramavatar Ray v. Sham Sunder Narendra*, 23 C. 526.

(c) *Rangoon Botatoung Co. Ltd. v. The Collector of Rangoon*, 40 C. 21 ; 16 C. L. J. 245 : 16 C. W. N. 961;

(d) *Sandback Charity Trustees v. The North Staffordshire Railway Company*, (1877) L. R. 3 Q. B. D. 1.

(e) *The Special Officer, Salsette Building Sites v. Dassabhai Bezonji Motivalla*, 37 B. 506 : 17 C. W. N. 421.

(f) *Rangoon Botatoung Co. v. The Collector of Rangoon*.

that "An appeal does not lie to His Majesty's Privy Council from the decision of the High Court in appeal under section 54 of the Land Acquisition Act (I of 1894)."

To remove the bar to appeals to the Privy Council from the decision of the High Courts in cases in which the value of the claim is Rs. 10,000 or upwards, Act XIX of 1921 was passed which enacted that the awards in Land Acquisition cases by the Courts will be decrees and the grounds of the awards will be considered as judgment within the meaning of section 2 sub-section (2) and section 2 sub-section (9) respectively of the Civil Procedure Code, 1908, and section 96 of the Civil Procedure Code provides that "an appeal shall lie from every decrees passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court." An award is a "decree or order of a Civil Court". (f). An appeal lies under the law as amended in 1921 to the Privy Council (now Supreme Court) from a decree of the High Court passed on appeal from a reference under the L. A. Act as from a decree in ordinary suit, (g).

Remedy by appeal and not by suit :—A Court constituted under Act I of 1894 comes within the meaning of the High Courts Act, section 15, that is, it is a Court subject to the appellate jurisdiction of the High Court, (h). Upon the construction of the Act, a decision of the Court, is not appealable, and if there is an appeal, the decision of the appellate Court is final and not liable to be contested by a suit, (i).

Appeal against award :—The term "award" has not been defined in the Act but it is used throughout with reference to the compensation in some form or other. Under section 26 the award "shall be in writing signed by the judge and shall specify the amount awarded under clause (i) of sub-section (1) of section 23 and also the amounts respectively awarded under each of the other clauses of the same sub-section." Once a proper reference comes before the District Judge his final order on it is an award whether he gives an additional amount or he gives no additional amount or whether the acquisition officer's award is not upheld for some other reason, e. g., backing out of the Government. An appeal over such an order is competent both to the High Court and to the Privy Council now Supreme Court under section 54 as amended by Act XIX of 1921 & 1950. Sec. 54 of the L. A. Act only gives a right of appeal in the case of awards. The scheme of the Act contemplates that except when the L. A. Court makes an award there is no provision for appeals from that court. In the absence of special statutory authority there is no right of appeal, (j).

Letters Patent appeal against Awards :—By the amending Act of 1921 the awards of Courts made in Land Acquisition cases were placed in the

(f) *Manavikraman Tirumalpad v. Collector of the Nilgiris*, 41 M. 943.

(g) *Lala Narsingdas v. Secretary of State*, 29 C. W. N. 822.

(h) *Collector of 24-Parganas v. Sayed Abdul Ali*, 23 W. R. 329.

(i) *Nilmonee Singh Deo v. Ram Bondhu Roy*, 4 Cal. 758.

(j) *Krishnamoorthi Ayyar v. Special Deputy Collector*, 59 Mad. 554 : 1936 M. W. N. 193 : 43 L. W. 338 : 71 M. L. J. 76 : 165 I. C. 405 : 1936 A. I. R. (Mad) 514.

same category as decrees, and awards are now, after the passing of the Amending Act, decrees or orders of Civil Courts, and the statements of the grounds of such awards are judgements within the meaning of the Civil Procedure Code. A judgment in a Land Acquisition case is now under the Code of Civil Procedure and appealable as such. By the express provision contained in the Amending Act of 1921, a judgment includes a judgment in a Land Acquisition case. An appeal lies under Cl. 15 of the Letters Patent against such judgment, (k).

The word "only" in section 54 of the L. A. Act does not restrict the right of appeal but is intended to make it clear that the forum of appeal in land acquisition cases is always the High Court and that section does not affect the right of appeal from the judgment of one Judge to a Division Bench under cl. 10 of the Letters Patent. S. 26 of L. A. Act as amended clearly makes the award of Civil Court a judgment and decree and it necessarily follows that the decision of the High Court on appeal from such judgment and decree is also a judgment and decree. The object of the amendment was to extend the scope of the right of appeal and not to curtail any existing right. No leave for filing that appeal is necessary, (l). A Letters Patent Appeal against the judgment of a single judge is maintainable, (m).

Appeal against order of apportionment :—The L. A. Act contemplated two properly separate and distinct forms of procedure, one for fixing the amount of compensation described as being an award (an appeal from that award or any part of that award is given to the High Court under section 54 of the Act) ; and the other, for determining in case of dispute the relative rights of the persons entitled to the compensation money. The determination of such a dispute is a decree and as such appealable, (n). A decision on the question of respective interests of the claimants in the compensation awarded in a reference under section 30 L. A. Act is appealable as a decree and not as an award under section 54 of the Act. The provisions of section 54 L. A. Act are subject to the Code of Civil Procedure, 1908, and although the order determining the rights of the parties is not, in view of the Privy Council judgment, an award, it is certainly a decree or of the nature of a decree and an appeal would lie against it. That is the interpretation which has been put upon the Privy Council judgment in, (o). There is nothing to exclude an appeal from an order relating to the distribution of the compensation money under the Civil Procedure Code, (p).

Appeal to High Court :—Section 54 provides that "subject to the

(k) *The Collector of Dacca v. Golam Azam Chowdhury*, 40 C. W. N. 1143.

(l) *Narayan Das Daulatram v. Garpatrao*, I. L. R. (1944) Nag. 780 : 1944 N. L. J. 267 : A. I. R. (1944) Nag. 284.

(m) *Sri Chand Sheo Lal v. Union of India*, A. I. R. 1963 Punj. 221.

(n) *Ramachandra Rao v. Ramachandra Rao*, 26 C. W. N. 713 (P. C.) : 35 C. L. J. 545.

(o) *Venkatareddi v. Adinarayana Rao*, 52 Mad. 142 : 56 M. L. J. 357 : 119 I. C. 42 : 1929 A. I. R. (M) 351 : *Raghunathdas Harjivandas v. The District Superintendent of Police, Nasik*, 57 Bom. 314 : 35 Bom. L. R. 276 : 144 I. C. 710 : 1933 A. I. R. (B) 187.

(p) *Fateh Mahommed v. Thariomal*, I. L. R. (1939) Kar. 152 : 180 I. C. 681 : A. I. R. (1939) Sind 66.

provisions of the Code of Civil Procedure an appeal shall only lie in any proceedings under this Act to the High Court from the award or from any part of the award, of the Court." The "Court" as defined in section 3(d) L. A. Act means "a principal Civil Court of original jurisdiction, unless the Local Government has appointed a special judicial officer within any specified local limits to perform the functions of the Court under this Act." Hence it follows that an appeal lies to the High Court from the award of the principal Civil Court of original jurisdiction and in cases of the appointment of a special judicial officer by the local Government to perform the functions of Court, from the award of that Court. But the view expressed in, (q), that "a L. A. Court constituted by the appointment of the Chief Judge of the Court of Small Causes in Madras as its special judicial officer is not a principal Civil Court of original jurisdiction within the meaning of section 3 (d) of the L. A. Act, but it is a Special Court having its own statutory status which does not follow the status of a Court ordinarily presided over by the person who happens to be appointed as its judge. Neither section 54 of the L. A. Act nor section 96 C. P. C. confers on the High Court a power to act as a Court of appeal from the decisions which are not awards but decrees of the said Court," is hardly consistent with the provisions of sections 54 and 3 (d) of the L. A. Act. Accordingly it has been held in, (r), that though a reference to a Subordinate Judge under sec. 30 of the L. A. Act can not be called a suit, the decision by the Subordinate Judge in the matter which involves a dispute between a zaminder and his rayats about the right to receive the compensation money is appealable to the District Judge.

Grounds of interference by appellate Court :—In cases which raise a question of the adequacy of the amount that has been awarded by a Court or tribunal which has got to assess the exact amount, it is a well settled principle that an appellate Court ought not to interfere except on the basis of a fundamental or radical error of principle, (s).

Appeals are subject to the provisions of the Code of Civil Procedure :—Section 98 of the Civil Procedure Code, 1908, applies to Land Acquisition appeals and if a Bench of judges hearing an appeal differ as to the amount of additional compensation awardable, the proper order to pass on the appeal is to confirm the award of the lower Court under that section and not to give a decree up to the lower limit of additional compensation, (t). Section 54 of the L. A. Act makes no departure from the ordinary rules of the Civil Procedure Code which allows a party to appeal not only against the whole decree but also against parts of it, (u). Where a number of separate references under the L. A. Act are heard together and disposed of by one

(q) *Mahant Bhagavathi Das Bavaji v. Sarangaraja Iyenger*, 54 Mad. 722

(r) *Raja of Sivaganga v. Karuppiah*, 1939 M. W. N. 230 : 49 L. W. 238 : A. I. R. 1939 (Mad) 716.

(s) *Tallapragada Veera Venkamma and others v. The Collector of Godavari and others*, 1950 M. L. J. Vol. I, 725.

(t) *Kishen Doyal v. Irshad Ali*, 22 C. L. J. 525 : *Manavikraman Tirumalpad v. Collector of Nilgiris*, 41 M. 943. 49 I. C. 27 : A.I.R. 1919 H. 626.

(u) *Deputy Collector, Madura v. Muthirula Mudali*, 17 M. L. J. 180 : 2 M. L. T. 83 : 30. M. 324.

judgment and where distinct appeals are filed from this judgment it is absolutely essential under Or. 41, r. 1 of the C. P. C. that a copy of the award should accompany each memorandum of appeal and the Appellate Court has no power to dispense with such copy, (v).

In, (w), their Lordships point out that appeals from award as provided for in section 54 L. A. Act are governed as to their procedure from the date of the filing of the appeal to its disposal by the rules provided for in the Civil Procedure Code. The Procedure laid down in the C. P. Code with reference to appeals from original decrees governs appeals under section 54 of the L. A. Act, (x). The decision in reference under s. 30 is not an award within the meaning of s. 54 and hence no appeal would lie against it under that section. But the decision is appealable under s. 96, Civil Procedure Code. Where there is a litigation in Court such litigation, though not called a suit, is yet a civil proceeding and unless the right of appeal given under that Code is taken away expressly, it cannot be held that the right of appeal does not exist. Decision in reference under s. 30 being one on rights of contending parties, is a decree within s. 2(2), and is appealable under s. 96. Appeal against decision in reference under s. 30, where the amount involved is less than Rs. 5,000 is not an appeal from an award and therefore it lies to the District Court, and not to the High Court, (y). The decision of the Court of a Subordinate Judge upon a reference made to it under s. 30 of the L. A. Act, is not an award under Part III of the Act, but is a decree, and, if the subject-matter of the *lis* is below Rs. 5,000, an appeal from the decision lies to the District Court and not to the High Court under sec. 54 of the Act, (z).

A subordinate judge appointed by the Provincial Government under sec. 3 (d) of the L. A. Act to decide a dispute referred by a Collector under sec. 30 is not a *persona designata* but a Civil Court and an appeal lies from his decision. A subordinate judge so appointed to decide a dispute with regard to the allocation of compensation money is a Civil Court and proceedings before him are governed by the provisions of the Civil Procedure Code, (a).

It does not follow because an order apportioning compensation among disputing claimants is not an award or part of an award within the meaning of sec. 54 of the Act, that no appeal lies. An appeal would lie though not to the High Court. Where a reference in Land Acquisition proceedings relating to a dispute as to the apportionment of compensation deposited by the Collector under sec. 30 of the L. A. Act is transferred by the District Judge to the Assistant Judge under the Civil Courts Act for disposal, the order passed in the case by the Assistant Judge is appealable to the District Judge

(v) *Mobarak Ali Shah v. Secretary of State*, (1925) A. I. R. (L) 438 ; *Nuridin v. Secretary of State*, 97 I. C. 187.

(w) *Rangoon Botatoung Co. v. The Collector of Rangoon*, 40 Cal. 21.

(x) *Ramasami Pillai v. Deputy Collector Madura*, 43 Mad. 51.

(y) *Mahalinga Kudumban v. Theethareppa Mudaliar*, 29 M. L. W. 237 : (1929) M. W. N. 62 : (1929) A. I. R. (M) 223.

(z) *Janapareddi Venkata Reddi v. Janapareddi Adinarayana Rao*, 52 Mad. 142.

(a) *Chikkaune v. Perumal*, I. L. R. 1940 Mad. 791.

when the subject matter of the order does not exceed Rs. 5,000. The High Court has no jurisdiction to deal with the appeal, (b).

Appeal against award lies even before apportionment :—In (b¹), Chandra-varkar J. had held that no appeal lies from an award which merely determines the amount of gross sum payable as compensation, as preliminary to the further question, to whom the amount so determined should be paid. Following the above case, it was held by the Lahore High Court in, (c), that until the District Judge had decided the question as to apportionment there was no final award which could be appealed against. This view altogether ignores that the L. A. Act provides for two classes of references to the Judge, one to assess compensation under Part III and the other for apportionment under Part IV of the Act, (d).

In, (e), their Lordships of the Judicial Committee have distinctly laid down that the L. A. Act contemplated *two properly separate and distinct* forms of procedure, one for fixing the amount of compensation described as being an award (an appeal from that award or any part of that award is given to the High Court under section 54 of the Act) ; and the other, for determining in case of dispute the relative rights of the persons entitled to the compensation money. When once the amount as to the award has become *final*, all question as to fixing of compensation are then at an end ; and the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the Court and the parties then can proceed to litigate in the ordinary way to determine what their right and title may be. A separate notice of the apportionment proceedings is requisite to bind any person by these proceedings and where such a notice has not been served, any party interested although served with notice of the proceedings for settling the amount of compensation, cannot be considered a party to the proceedings for apportioning it, (f).

In case of appeal against an award of the Court fixing the amount of compensation the only person who can be impleaded is the Secretary of State, (g) and in case of appeals against an award of apportionment the claimants themselves are impleaded as appellants or respondents and the Secretary of State is not at all a necessary party to the same. Hence the view that no appeal lies against an award of valuation until an award for apportionment has been made is hardly consistent with the law, practice or procedure.

Appeal against an order made under section 31 (2) L. A. Act :—A reference under section 31 (2) of the L. A. Act is made under section 18 of the Act. Where such reference is made, the court makes an award under section 26

(b) *Mangatram v. Hundomal*, I. L. R. (1941) Kar. 133 : 195 I. C. 711 : A. I. R. (1941) Sind 100.

(b) *Ardeshir Manchorji Kharadi v. Assistant Collector, Poona*, 10 Bom. L. R. 517.

(c) *Deo Karan Das v. Secretary of State*, 94 I. C. 249 : (1926) A. I. R. (L) 442.

(d) *Taylor v. Collector of Purnea*, 14 C. 423.

(e) *Ramachandra Rao v. Ramachandra Rao*, 35 C. L. J. 545 : 26 C. W. N. 713 (P. C.).

(f) *Hermutjan Bibi v. Padmolochan Das*, 12 C. 33.

(g) *Fakir Chand v. The Municipal Committee of Hazro*, 18 I. C. 37.

and it has the force of a decree. It is an award of Court and appealable under section 54 of the Act, (h).

Appeal against an order of investment under section 32 :—Properties set apart for charities are *prima facie* inalienable ; and when such properties are acquired under the L. A. Act, the award made thereunder may direct the investment of the compensation money in Government securities. An appeal lies against the award in so far as it directs investment, under section 54 of the L. A. Act, (i).

No appeal lies against an order for refund :—An order made by a Court in a proceeding under the L. A. Act directing a party to whom a sum of money awarded as compensation under the Act had been paid under a previous order, to refund the money is not an award or portion of an award within the meaning of section 54 of the Act nor does it come under any of the Orders mentioned in section 588, (now section 104 and Or. 43, r. 1) of the Civil Procedure Code. No appeal therefore lies from such an order, (j). An order made by a Court in a proceeding under the L. A. Act directing a party to whom a sum of money awarded as compensation under the Act has been paid under a previous order to refund the money is not an award or a portion of an award within the meaning of section 54 of the Act and is, therefore, not appealable. Such an order will, however, be set aside in revision being without jurisdiction, (k).

No appeal lies against an order refusing to restore a case by setting aside an *ex-parte* decree :—An order of the Special L. A. Judge refusing to restore a claim case by setting aside a decree *ex parte* for default of the claimant, was held not to be an "award" and did not come under section 54 of the L. A. Act, and an appeal was, therefore, held not to lie against such an order, (l). No appeal lies from an order passed by a L. A. Judge dismissing for default an application to restore a land acquisition case which has been dismissed for default. The addition of the words '*In any proceeding*' in section 54 of the L. A. Act by the Amending Act of 1921 has not extended the right of appeal under the section to orders which are not awards or parts of an award, (m). No appeal lies from an order passed by a L. A. Judge dismissing an application under Or. 9, r. 13 for setting aside an *ex parte* award, (n).

No appeal lies against an order refusing to add party :—Section 54 of the L. A. Act deals with orders made between parties to the proceedings before the District Judge. Hence an order rejecting an application by a person

(h) *Mahabir Prasad v. Dharma*, 1941 A. W. R. 391 : 1941 O. W. N. 1325 : 17 Luck. 536 : 198 I. C. 388 : A. I. R. (1942) Oudh. 141.

(i) *Shiva Rao v. Nagappa*, 29 M. 117 ; *Trinayani v. Krishna*, 17 C. W. N. 935 : 6 I. C. 157.

(j) *Nobin Kali v. Bonolata*, 32 Cal. 921.

(k) *Gohar Sultan v. Ali Muhammad*, 63 I. C. I : 3 L. L. J. 421 : A.I.R. 1921 L. 153.

(l) *Hasun Mulla v. Tasiruddin*, 39 C. 393 : 15 I. C. 925.

(m) *Banshidhar Marwari v. Secretary of State*, 45 C. 312 : 132, I. C. 479 : 1927 A. I. R. (C) 533.

(n) *Rajendra Nath Kanrar v. Kamal Krishna Kundu Chowdhury*, 36 C. W. N. 352.

to be made a party on the ground that he had no *locus standi* is not appealable, (o).

Appeal lies against order for costs :—Under section 27, an award of costs is a part of the award and is appealable as such under section 54 of the Act. Section 27 does not authorise the Court to allow any amount for pleader's fee at its discretion. When the subject-matter is capable of being valued, pleader's fee must be allowed in the scale laid down in Civil Rules of Practice or on such other scale as may be in force for the particular Court, (p). The lower Court upheld the Collector's award but refused Government costs by explaining that the exaggerated demands of landowners were due to the uncertainty of land market due to the boom and its aftermath. There was nothing in the case inconsistent with the special provisions of the L. A. Act. It was held that s. 35, C. P. C. governed the case, and that the lower Court had exercised its discretion in violation of well-recognised principles of law and therefore an appeal lay for costs only, (q).

No appeal lies against order rejecting reference :—No appeal lies under section 54 of the Act from an order of the District Judge rejecting a reference under section 18 on the ground that the application to the Collector was time barred under sub-section (2) of the section, (r).

Appeal against an order under sec. 49 L. A. Act :—A decision or determination under the L. A. Act which has no reference to compensation in some form or other is not an "award". An order under section 49 of the L. A. Act was held therefore not to be an award and not appealable under sec. 54, (s). But in *Secy. of State v. Narayanaswami Chettiar*, (s), it has been held that the decision of the Court upon a reference under sec. 49 must be held to be a decree and, therefore, appealable.

Court-fees in appeal against award :—Under section 8 of the Court-Fees Act the amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the *difference* between the amount awarded and the amount claimed by the appellant, (t), where it has also been held that an appeal by the Secretary of State against the award of the Court requires a court-fee stamp of Rs. 10 only under Art. 17 (4), Sch. II of the Act.

The above view was not accepted as correct in *Secretary of State for India in Council v. K. S. Bonerjee*, (u), where Walmsley J. says : "the Court-Fees Act makes it clear that a claimant must pay *ad valorem* fees but the

(o) *Golap Khan v. Bholanath Marick*, 12 C. L. J. 545 : 7 I. C. 481.

(p) *Ekambara Grammany v. Muniswami Grammany*, 31 M. 328.

(q) *Assistant Collector, Salsette v. Damodardas Tribuvandas Bhanji*, 30 Bom. L. R. 1622 : 1929 A. I. R. (B) 63.

(r) *Nafisuddin v. Secretary of State*, 9 Lahore, 244 : 104 I. C. 397 : 1927 A. I. R. (L) 858 ; *Dambeswar Sarma v. Collector of Sibsagar*, 89 I. C. 637.

(s) *Sarat Chandra Ghose v. Secy. of State*, 46 Cal. 861 : 23 C. W. N. 378. *Secy. of State v. Narayanaswami Chettiar*, 55 Mad. 391 : 1931 M. W. N. 1266 : 133 I. C. 426 : 1932 A. I. R. (M) 55.

(t) *Secretary of State v. Baswa Singh*, 19 P. W. R. 1913 : 17 I. C. 764.

(u) *Secretary of State for India in Council v. K. S. Bonerjee*, 97 I. C. 140.

wording of the section that makes that provision suggest that when the Secretary of State appeals for a reduction of the sum awarded, some other rule applies, and if the court-fees payable by a claimant are not governed by the ordinary rules affecting decrees, it seems that they cannot be applicable in the case of an appeal by the Secretary of State. If that is so the only Article in the Court-Fees Act under which an appeal can be classed, though not very appropriately, is Art. 17 (4), an appeal to set aside an award. I think however that the position has been changed by the recent amendment of the Land Acquisition Act. For a purpose unconnected with the court-fees, the decision of the Judge has been made a decree, and the result is that Secy. of State is appealing against a decree. Where a claimant demands an enhancement of the Judge's award he also is appealing against a decree *and the special provision* of s. 8 of the Court-Fees Act may now, probably, be regarded as redundant. At any rate the inference drawn from the discrimination made between the claimant and the Secretary of State is no longer warranted."

A memorandum of appeal against the decision of the Dist. Judge on a reference made to him under the L. A. Act enhancing the amount of compensation requires *ad valorem* court-fee under Sch. I, Art 1 and not Rs. 10 under Sch. II, Art. 17 (iv) as laid down in, (v). An appeal by Government against an award of a District Court under the L. A. Act is taxable under sec. 8 of the Court-Fees Act or else under Art. 1 of the First Schedule of the Act. Art. 17 (iv) of the Second Schedule of the Act does not apply in such a case, (w). Where no compensation has been allowed by an award under the L. A. Act, court-fee payable on the memorandum of appeal is the *ad valorem* court-fee on the amount claimed, (x).

Sec. 8 does not itself impose an *ad valorem* charge, but lays down in what particular way the fee is to be charged on the assumption that it has been charged by the Act already. It really favours the subject in as much as it means that even if the appellant may say that the total amount of the compensation ought to have been higher than has been actually awarded or may raise questions of title which require to be investigated, he has always to pay court-fees only on the difference between the amount which he claims for himself and the amount awarded to him, (y).

Court-fees in appeal against order of apportionment :—In the case of an appeal against a decision in reference under sec. 30 the court-fee is to be charged under Art. 1, Sch. 1, Court-Fees Act, (z). In an appeal by co-sharer from an order directing compensation to be made to certain persons, for a share (which is definitely ascertained) in the compensation *ad valorem* fee is

(v) *Secy. of State v. Baswa Singh*, 17 I. C. 764 ; *Secy. of State v. Baij Nath*, 1932, A. I. R. (O) 224.

(w) *Special Collector of Rangoon v. Ko Zi Na*, 6 Rang. 228 : 110 I. C. 870 : 1928 A. I. R. (R) 197.

(x) *Puran Chand v. Emperor*, 27 P. L. R. 91 : 92 I. C. 991 : 1926 A. I. R. (Lah.) 343.

(y) *In re Ananda Lal Chakrabutty*, 35 C. W. N. 1103 : 59 Cal. 528 : A. I. R. 1932 Cal. 346 ; *Sahadev Singh v. Punjab State*, A. I. R. 1957 Punj. 222.

(z) *Mahalinga Kudamban v. Theetharappa Mudaliar*, 29 M. L. W. 237 : (1929), M. W. N. 62 : 1929 A. I. R. (M) 223.

to be paid on the amount of compensation claimed in the appeal and a court-fee stamp of Rs. 10 is insufficient, (a). But where one of the claimants filed an appeal against the order of apportionment claiming that he alone was the owner of the property and as such is entitled to the entire amount of compensation, sec. 8 of the Court-fees Act is not applicable. Art. 17 (iii) of Schedule II shall apply to such an appeal, (b).

A certain *debutter* property having been acquired under the L. A. Act the compensation allowed by the Collector was deposited in Court. One T applied to withdraw the money on the ground that she was entitled to it as executrix to the will of her late husband. On objection by one K that the money in deposit should be invested in Government securities and only the interest to be paid over to the *shebait*, the L. A. Judge passed an order under section 32 of the Act directing the payment of the interest only to the applicant. Against this order T preferred an appeal to the High Court on a court-fee stamp of Rs. 10 only. It was held that the case came under the provisions of section 8 of the Court-Fees Act and an *ad valorem* court-fee ought to have been paid, (c).

An appeal to the High Court from an order of the Calcutta Improvement Tribunal in which the correctness of total amount awarded as compensation is not questioned but it is claimed that the appellant should have been awarded a portion of it whereas he has been awarded nothing, is governed by sec. 8 and Art. 1, Sch. 1 of the Court-Fees Act and *ad valorem* fee on the amount claimed by the appellant is payable, (d).

On a reference under s. 18, L. A. Act the District Judge held that one of the claimants, a Hindu widow, was entitled to a life interest in the compensation money awarded for the *melwaram*, but, on account of the limited interest held by her, he, under section 32 of the Act, ordered the money to be invested in a bank, which was accordingly done. In an appeal filed by another claimant claiming that the compensation was payable to him alone, it was held that the proper court-fee payable on the memorandum of appeal was not a court-fee *ad valorem* on the amount of the award but a court-fee as for a mere declaration. The compensation money was not payable to the widow in person but was held in trust for her by the Court, and therefore a mere declaration of the Appellate Court to the lower Court directing that the money is not any longer to be so held in trust for the widow but is to be handed over to the appellant, is sufficient.

Even in cases covered by ss. 13, 14 and 15 of the Court-Fees Act, the

(a) *Mohammad Suleman v. Ghamandi Lal*, 22 P. L. R. 251 : 134 I. C. 127 : 1931 A. I. R. (L) 343.

(b) *Hikim Martin De Silva v. Martin De Silva II*, A. I. R. 1957 Raj. 275 : I. L. R. (1956) 6 Raj. 230.

(c) *Bunwary Lal v. Daya Sankar*, 13 C. W. N. 815 ; *Sheoratan Roy v. Mohri*, 21 All. 354 ; *Kasturi Chetti v. Deputy Collector of Bellary*, 21 Mad. 269 ; *Trinoyani Dast v. Krishna Lal Dey*, 39 C. 906 : 17 C. W. N. 933 ; *Mangaldas Girdhardas Parekh v. The Assistant Collector of Prantij Prant, Ahmedabad*, 45 B. 277 : A. I. R. 1921, Bom. 325.

(d) *In re Ananda Lal Chakraburty*, 35 C. W. N. 1103 ; 59 Cal. 528 : A. I. R. 1932 Cal. 346.

High Court can, under s. 151, C. P. C. order refund of court-fee paid in excess when obvious injustice would be done if it were not repaid, (e).

Court-fee in appeal from an order of apportionment by a claimant in his representative capacity :—When an executor of a will creating a Debttar, appeals as executor against an order in land acquisition proceedings awarding the entire compensation for the Debttar property acquired, to a person claimaing as shebait representing the deity, the court-fee payable on the Memorandum of Appeal is *ad valorem* and not a fixed court-fee of Rs. 15/- and that on the amount determined thereunder, and not on the entire compensation money. If the appellant has no personal interest in the compensation money, the difference in the amount, awarded so far as he is concerned, namely, nil, and the amount claimed so far as he is concerned, would appear to be also nil. If however it can be shown that he has some personal interest in the matter in any way it may be that some value should be placed on that and he should pay court-fees accordingly. It is for the parties to say what the value is. It will therefore appear that a court-fee stamp of Rs. 15/- is payable on the memorandum of appeal of an executor, administrator or trustee on the ground that the subject matter of the appeal cannot be estimated at money value, (f).

Limitation for appeals under section 54 :—There is no special period of limitation provided for in the L. A. Act nor is there any allusion unless it be by implication to the Limitation Act. Art. 156 of the Limitation Act, 1908, provides a period of 90 days for "appeal under the Code of Civil Procedure 1908, to High Court except in the cases provided for by Art. 151 and Art. 153, the time to run from the date of decree or order appealed from." Appeals under the Code of Civil Procedure in Art. 156 of the Limitation Act mean appeals, the procedure in respect of which is governed by the Civil Procedure Code. Art. 156 applies to appeals provided by sec. 54 of the L. A. Act, (g). The present law contained in Article 116 of the Limitation Act, 1963, is to the same effect.

Extension of the period of limitation :—Where two references under the L. A. Act, were disposed of by one main judgment in one of the cases and by a short judgment in the other containing merely a reference to the main judgment, it is necessary in an appeal in a reference in which the short-judgment is written to file a copy of the main judgment also. It was held that the Court may in a proper case extend the time for filing such a copy under section 5 of the Limitation Act, (h). The effect of the amendment made in sec. 26 of the L. A. Act, 1894 by Act XIX of 1921 read with Order XLI, r. 1 of the C. P. C. has been clearly set out in, (i). Although the words

(e) *Thammayya Naidu v. Venkataramanamma*, 55 Mad. 641 : 62 M. L. J. 541 : 1932, A. I. R. (Mad.) 438.

(f) *Krishna Chandra Das v. Lakhinarayan Das*, 54 C. W. N. 496.

(g) *Ramasami Pillai v. Deputy Collector of Madura*, 43 Mad. 51 : 39 M. L. J. 110 : 26 M. L. T. 136 : 10 L. W. 205 : (1919) M. W. N. 565 : 53 I. C. 405.

(h) *Narsing Das v. Secretary of State*, 112 I. C. 797 : 1928 A. I. R. (L) 263 : A. I. R. 1925 P. C. 91

(i) *Mubarik Ali Shah v. Secretary of State*, 6 L. 218 and *Nur Din v. Secretary of State*, 7 L. 539.

"sufficient cause" in section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice when no negligence, nor inaction nor want of *bonafides* is imputable to the appellant ; nevertheless, the mere fact that an appellant has misconstrued one of the rules and by reason of such mistake has omitted to bring his appeal in time, is not a sufficient reason for enlarging the time for appeal, (j). Wrong advice bona-fide given by a lawyer is a sufficient cause, (k).

Parties in appeal :—The Local Government acquired a plot of land for the District Board, Gujranwala under the provisions of the L. A. Act. Objection being taken to the amount of compensation, reference was made to the District Judge, who gave an award therein. An appeal being preferred against the award to the High Court on behalf of "Collector and Chairman, District Board Gujranwala," it was contended that the "Collector and Chairman, Gujranwala," was not competent to present the appeal. It was held that the contention must prevail in as much as land had been acquired by the Local Government and according to section 79 C. P. C. suits by or against the Government must be instituted by or against the Secretary of State for India in Council, the rule being applicable to appeals as well, (l). In an appeal in the case of Land Acquisition award the only person who can be impleaded as a respondent is the Secretary of State and if he is not made a respondent when the appeal is filed there is in fact and in law no respondent at all so far as the respondent is concerned. An appeal can not be said to be presented when the Memorandum of Appeal omits the name of the person who alone can be the respondent in such appeal, (m).

Duty of the appellant :—The Court is bound to treat the matter judicially as far as possible and it should only guess when science or common sense will not point to a definite conclusion. The Judge ought to be liberal in the sense that he should not be too meticulous or pedantic in dealing with the evidence. The value of the property should not be unduly depreciated in order that Government may acquire as cheaply as possible, and seeing that an exact calculation to annas and pies is usually impossible, the Court is justified in taking a broad view as favourable to the owner as evidence permits. But, as in the case of any other judicial proceedings, the findings must be based upon evidence and legitimate deductions from it and if there is an appeal, both the evidence and the deductions are subject to reconsideration by the appeal Court. The party appealing must satisfy the Court that the judgement appealed from is wrong, and it may be more difficult to do that in land acquisition appeals than in other cases. But the same principles must apply as in ordinary appeals. It is not necessary to show that the judgement is perverse. It is enough to show that it is inconsistent

(j) *Secretary of State v. Tirath Ram*, 9 L. 76 : 104 I. C. 281.

(k) *Khsetramoni v. Surendra*, 60, C. W. N. 200 ; *Chandanmal Indrakumar v. J. M. Gönka*, 67 C. W. N. 482. *Dinobandhu Sahu v. Jadumoni*, 1954, S. C. J. 605. *A. D. Partha Sarathy v. State of Andhra Pradesh*, A. I. R. 1966 S. C. 38 ; *Ramlall & Ors. v. Rewa Coalfield Ltd.*, A. I. R. 1962 S. C. 361 and *Sunderbai's case* 46 I. A. 15.

(l) *Collector and Chairman District Board, Gujranwala v. Hira Nand*, 9 Lahore 667.

(m) *Fakir Chand v. The Municipal Committee of Hazro*, 18 I. C. 37.

with the evidence or based on unsound deductions, (n). It is the duty of the appellant to satisfy the Court of Appeal that the decision of the trial Court is erroneous, (o). The Collector can not, in appeal to the High Court from a decision of the District Judge on a reference under section 18 of the L. A. Act, urge a point which has not been raised by him in the lower court where the District Judge valued a land as homestead land fit for residential purposes and no suggestion was made by the Collector that the land was not homestead land but only occupancy land which the tenant could not sell without the landlords' consent as building lands, the Collector can not in appeal challenge the valuation of the District Judge on the point and can not allege that the land was not seable as a building land, (p).

Power of Revision by High Court :—It is competent for the High Court to interfere in revision in a suitable case with a decision of the Court on a reference made under section 18 (1) of the Act. The Calcutta Improvement (Appeals) Act, 1911, by allowing an appeal from certain decisions of the tribunal to the High Court, has the effect of making the tribunal a Court subordinate to the High Court with in the meaning of section 115 of the Civil Procedure Code, (q). Apart from section 115 C. P. C. under Art. 227 of the Constitution of India every High Court has superintendence over all courts and tribunals throughout the territories in relations to which it exercises its jurisdiction. By the Abolition of the Privy Council Jurisdiction Act 1949 and under Art. 133 (1) of the Constitution of India an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies (a) that the amount or value of the subject matter in dispute in the Court of the first instance and still in dispute in appeal was and is not less than Rs. 20,000/- or such other sum as may be specified in that behalf by Parliament by law ; or (b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value ; or (c) that the case is a fit one for appeal to the Supreme Court. It has further been provided by Art. 374 (4) of the Constitution that on and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any Court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to, and disposed of by the Supreme Court.

Appeal to Privy Council now lies to Supreme Court :—The right of appeal under sections 54 of the L. A. Act is limited by section 110, as well as by

(n) *The Asstt. Development Officer, Bombay v. Tayaballi Alibhoy Bohori*, 35 Bom. L. R. 763.

(o) *Fakrunissa v. Lazarus*, 25 C. W. N. 866 (P. C.) : 35 C. L. J. 116 : *Nobokishore v. Upendra Kishore*, 26 C. W. N. 322 (P. C.) : *Secretary of State v. Bejoy Cumar Addy*, 40 C. L. J. 303.

(p) *Collector of Monghyr v. Bhekdhari Maneer*, 21 Pat. L. T. 9 : 189 I. C. 650 : A. I. R. 1940 Pat. 362.

(q) *Province of Bengal v. Ramchandra Bhosica*, I. L. R. (1943) 1 Cal. 69.

Order 45, C. P. C. S. 110 has reference only to clauses (a) and (b) of section 109 and not to clause (c). The absence of any mention of section 109 C.P.C. in section 54 of the L. A. Act shows that the legislature did not intend to give a right of appeal against an order of the High Court unless it fell under clauses (a) and (b) of section 109 which are dealt with in section 110 and so the section excludes a right of appeal on the ground of a case being a fit one to appeal under clause (c) of section 109, (r). Art. 135 of the Constitution of India provides "Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under existing law."

Principle of interference by Supreme Court :—In accordance with the practices of the Judicial Committee in appeals involving the valuation of property in India their Lordships will entertain an appeal under Act XIX of 1921 (L. A. Amendment Act) section 2, as to the value of the property compulsorily acquired only upon questions of principle, including errors in appreciating or applying the rules of evidence or the judicial methods of weighing evidence, (s). But the Privy Council in such cases will not interfere with the judgments of the Courts in India as to matters involving valuation of property and similar questions where knowledge of the circumstances and of the District may have an important bearing on the conclusion reached unless there is something to show not merely that on the balance of evidence it would be possible to reach a different conclusion but that the judgment cannot be supported as it stands, either by reason of the wrong application of principle or because some important point in the evidence has been overlooked or misapplied, (t).

Where the question as to the proper amount to be awarded as compensation for land acquired under the L. A. Act is one of mere valuation and no question of principle is involved the Privy Council will, in accordance with their usual practice, decline to interfere with the decision of the Court of Appeal in India, (u). In appeals involving questions of valuation of property acquired, the Judicial Committee will not interfere unless some erroneous principle has been invoked or some important piece of evidence has been overlooked or misapplied, (v).

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- (r) *Jaswantmall Sowcar v. Collector of Madras*, 1949, M. W. N. 665 : 62 L. W. 749 : (1949) 2 M. L. J. 556.
- (s) *Narsingh Das v. Secretary of State*, 52 I. A. 133 : 6 L. 69 ; *Nawroji Rustomji Wadia v. Government of Bombay*, 49 B. 700 (P. C.) : 30 C. W. N. 386 (P. C.).
- (t) *Lala Narsingdas v. Secretary of State*, 29 C. W. N. 822 : *Prag Narain v. The Collector of Agra*, 59 I. A. 155 : 54 All. 286 : 62 M. L. J. 682 : 26 C. W. N. 579 : 55 C. L. J. 318 : 34 Bom. L. R. 386 : 134 I. C. 445 : 1932 A. I. R. (P. C.) 102 ; *Ram Protap Chamarla v. Secretary of State*, 32 Bom. L. R. 1536 (P. C.) : 34 C. W. N. 1106 (P. C.).
- (u) *Vallabdas Naranji v. The Collector under Act 1 of 1894*, 49 C. L. J. 497 (P. C.) : 33 C. W. N. 549 (P. C.) : 26 A. L. J. 1384 : 29 L. W. 193 : 115 I. C. 730 : 1929 A. I. R. (P. C.) 112.
- (v) *Amaram v. The Collector of Nagpur*, 33 C. W. N. 458 (P. C.) ; *Ahidhar Ghosh v. Secretary of State*, 57 I. A. 223 : 58 Cal. 316 : 34 C. W. N. 877 : 52 C. L. J. 138 : 32 Bom. L. R. 1163 : 124 I. C. 908 : 1930 A. I. R. (P. C.) 249.

The Supreme Court has adopted the same principle for interference, (w).

No appeal to Supreme Court lies from an award under Local Acts :— Act XIX of 1921 has not the effect of giving a right of appeal to the Privy Council from a decision of the High Court upon an appeal under Act XVIII of 1911 (The Calcutta Improvement Act) from an award of the tribunal appointed under the Calcutta Improvement Act, 1911, assessing compensation in respect of land acquired under the provisions of that Act, (x).

Leave for appeal to Supreme Court :—Whether a particular order is a “final order” within the meaning of section 109 of the Civil Procedure Code, 1908, for the purpose of granting leave to His Majesty in Council must depend upon its nature and contents and its relation to the proceedings in which it has been made. As a general rule an order cannot be rightly considered final which settles a part only of several issues of law and facts ; in other words if the order decides a question the solution of which cannot, whatever view may be taken of it, terminate the proceedings before the Court, it cannot appropriately be called a final order. An order of the High Court which dealt with the question of a L. A. Judge for discovery is not a final order within section 39 of the Letters Patent or section 109 of the C. P. C. An order of the High Court holding that the L. A. Judge could not review at the instance of the Secretary of State the award of the Collector in so far as it was not challenged by the claimants, the objections of the claimants to the award still remaining to be determined by the Judge, was not an order within section 39 of the Letters Patent or section 109 of the C. P. C., (y).

Power of Revision by the High Court :—Besides sec. 115 of the Civil Procedure Code every High Court under Art. 227 of the Constitution of India has a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction and by virtue of that power the High Court may call for records from that court and satisfy itself as to the propriety or legality of the order passed by the subordinate Court in any case, (z).

Power to make rules

55. (1) The ¹[appropriate Government] shall ² * * * * have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made :

(w) *Special Land Acquisition Officer, Bangalore v. Adinarayan Setty*, A. I. R. 1959 S. C. 429 : (1959) S. C. J. 431.

(x) *Secretary of State v. Hindusthan Co-operative Insurance Society Ltd.*, 58 I. A. 259 : 59 Cal. 55.

(y) *Secretary of State v. B. I. S. N. Company*, 15 C. W. N. 848 : 13 C. L. J. 90.

(z) *Messrs Maniklal Behari v. Parakh Kothi Ltd.*, 54 C. W. N. 934.

¹ These words were substituted for the words “Provincial Government” by the Government of India (Adaptation of Indian Laws) Order 1950.

² The words “subject to the control of the Governor-General in Council” were omitted by s. 2 and Sch. 1 of the Devolution Act, 1920 (38 of 1920).

³ [Provided that the power to make rules for carrying out the purpose of Part VII of this Act shall be exercisable by the Central Government and such rules may be made for the guidance of the State Governments and the officers of the Central Government and of the State Governments :

Provided further that every such rule made by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

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(2) The power to make, alter and add to rules under subsection (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules alterations and additions shall * * * * be published in the Official Gazette, and shall thereupon have the force of law.

Notes

This was Section 59 of the old Act X of 1870 which ran as follows :—

“The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to such rules so made.

All such rules, alterations, and additions shall when sanctioned by the Governor-General in Council, be published in the local official Gazette, and shall thereupon have the force of law.”

Amendment :—By sec. 2 and Sch. I of the Devolution Act XXXVIII of 1920, the words “subject to the control of the Governor-General in Council” which occurred between the words “shall” and “have” in sub-sec. (1) of sec.

³ These were inserted by the Land Acquisition Amendment Act, 1962 (31 of 1962) by sec. 6.

⁴ The proviso was repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵ The words “when sanctioned by the Governor-General in Council” were omitted by s. 2 and Sch. Pt. 1 of the Decentralization Act ; 1914 (4 of 1914).

55 have been omitted and to the same sub-section the following proviso have been added, namely :—

“Provided that where the provisions of this Act are put in force for the acquisition of land :—

- (a) for the purposes of any railway, or
- (b) for such other purposes, connected with the administration of a central subject as defined in section 45A of the Government of India Act, as the Governor-General in Council may by notification in the Gazette of India declare in this behalf,

the power to make, alter and add to rules conferred on the Local Government by this sub-section shall be exercised subject to the control of the Governor-General in Council.” By the Government of India (Adaptation of Indian Laws) Order, 1937 the above proviso to sub-section (1) has been omitted.

By sec. 2 and sch. Pt. I of the Decentralization Act IV of 1914 the words “when sanctioned by Governor-General in Council” which occurred between the words “shall” and “be published” in sub-sec. (3) of sec. 55 have been omitted.

The provisos to sub-clause (1) are introduced by the Land Acquisition (Amendment) Act 1962 (31 of 1962).

Effect of the amendment :—The rules were framed by the Local Government in furtherance of the provisions of the Act and in order to enable the Government offices who were not judicial officers better to carry out the requirements of the law, and the rules framed by the Board of Revenue were not *ultra vires*, (a). But the rules framed under the proviso to sub-sec. (1) added by the Devolution Act (XXXVIII of 1920) required that the rules framed by the Local Government must be subject to the control of the Governor-General-in-Council. The Rules must be published in the Official Gazette and shall have thereupon the force of law.

The effect of the amendment made under the Amendment Act of 1962 (31 of 1962) is that the State Government have no longer any power to frame rules for enforcement of any of the provisions of Part VII of the Act which consists of Sections 38 to 44 in acquisition of land for companies, with effect from 12th September, 1962 and it is the Central Government only that can frame the rules for the guidance of the officers of both the State Government and the Central Government in accordance with the procedures laid down therein.

For rules under this section for—(1) Ajmer-Marwara, *see* Ajmer Local Rules and Orders ; (2) Bengal, *see* Beng. State R. O. ; (3) Bihar and Orissa, *see* B. & O. Local Rules and Orders ; (4) Central Provinces, *see* Central Provinces Local Rules and Orders ; (5) United Provinces of Agra and Oudh, *see* U. P. Local Rules and Orders.

Non-observance of the rules :—Certain lands were acquired by Government for a railway company and subsequently found not to be required for the purpose. The lands so relinquished were sold by the Tahasildar

(a) *Ezra v. Secretary of State*, 30 Cal. 36 : 7 C. W. N. 249.

without public auction. It was held that the Tahasildar had power to sell the lands under the order of the Collector and the non-observance of the Rules as to sale of lands by public auction did not vitiate the sale by the Tahasildar in the absence of any fraud, misrepresentation or mistake, (b).

State notification and tenancy in cantonment area :—In *Rama Sundari Debi v. Indu Bhusan Bose*, (c), the Calcutta High Court has held (July, 1966) that “control of rent” in a cantonment area is a Central subject falling under Entry No. 3 of List 1, Union List in Seventh Schedule of the Constitution and that under Art. 246 of the Constitution the Parliament held exclusive right to legislate in respect thereof and that the extension of the provision of the West Bengal Premises Tenancy Act, 1956 by notification No. L. R. dated 30. 3. 56 by the State Government extending the provisions of the said Act to Barrackpore cantonment area was *ultra vires* and void.

(b) *Karapuraterak Ram Rama Kurup v. Ryra Kurup*, 20 L. W. 608 : 35 M. L. T. 122 : (1924) A. I. R. (M) 911.

(c) *Rama Sundari Debi v. Indu Bhusan Bose*, C. Ref. 20 of 1963 (unreported).

PART I

APPENDIX I

The Land Acquisition (Amendment) Act 1962 No. 31 of 1962.

This Act of Parliament received the assent of the President, on the 12th September, 1962.

An Act further to amend the Land Acquisition Act, 1894, to validate certain acquisitions under that Act.

Be it enacted by Parliament in the Thirteenth year of the Republic of India as follows :—

- | | |
|-------------------------|--|
| Short title | 1. This Act may be called the Land Acquisition (Amendment) Act, 1962. |
| Amendment of section 3 | 2. In Section 3 of the Land Acquisition Act 1894 (hereinafter referred to as the principal Act), in clause (e), the following words shall be added at the end, namely :—
“Or any other law relating to Co-operative Societies for the time being in force in any State.” |
| Amendment of Section 40 | 3. In Sub-section (1) of Section 40 of the principal Act, after clause (a), the following clause shall be inserted, namely :—
“(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose ; or” |
| Amendment of Section 41 | 4. In section 41 of the principal Act—
(a) for the words “the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by company or for provision of amenities directly connected therewith, or that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public”, the words, brackets, letters and figures “the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of Section 40” shall be substituted ;
(b) in clause (4), the word “and” occurring at the end shall be omitted and after that clause, the following clause shall be inserted, namely :— |

“(4A) when the acquisition is for the construction of any building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose the time within which, the building or work shall be constructed or executed ; and”

5. In Part VII of the principal Act, after Section 44, the following sections shall be inserted, namely :

“44A. No Company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government.

44B. Notwithstanding anything contained in this Act, no land shall be acquired under this Part, except for the purpose mentioned in clause (a) of sub-section (1) of section 40, for a private company which is not a Government company.

Explanation.—Private company and Government company shall have meanings respectively assigned to them in the Companies Act 1956”.

6. In section 55 of the principal Act, to sub-section (1), the following provisos shall be added, namely :—

Amendment of
Section 55

“Provided that the power to make rules for carrying out the purposes of Part VII of this Act shall be exercisable by the central Government and such rules may be made for the guidance of the State Governments and the officers of the Central Government and of the State Governments :

Provided further that every such rule made by the Central Government shall be laid as soon as may be after it is made before each Houses of Parliament while it is in session for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

7. Notwithstanding any judgment, decree or order of any Court, every acquisition of land for a company made or purporting to have been made under Part VII of the principal Act before the 20th day of July, 1962, shall in so far as such acquisition is not for any of the purposes

Validation of
certain
acquisitions

mentioned in clause (a) or clause (b) of sub-section (1) of section 40 of the principal Act, be deemed to have been made for the purpose mentioned in clause (aa) of the said sub-section, and accordingly every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of sections 40 and 41 of the principal Act, as amended by this Act, were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was entered into or action was taken.

Explanation.—In this section “Company” has the same meaning as in clause (e) of section 3 of the principal Act, as amended by this Act.

Ordinance, 3 of
1962 repeal and
saving

8. (1) The Land Acquisition (Amendment) Ordinance 1962 is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had commenced on the 20th day of July, 1962.

APPENDIX II

¹ The Land Acquisition (Amendment) Ordinance, No. 3 of 1962.

Promulgated by the President in the Thirteenth year of the Republic of India.

An Ordinance further to amend the Land Acquisition Act, 1894, and to validate certain acquisitions under that Act.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

Short Title and
Commencement.

1. (1) This Ordinance may be called the Land Acquisition (Amendment) Ordinance, 1962.

(2) It shall come into force at once.

Act of 1894 to
be temporarily
amended.

2. During the period of operation of this Ordinance, the Land Acquisition Act, 1894 (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in sections 3 and 4.

3. In sub-section (1) of section 40 of the principal Act, after clause (a), the following clause shall be inserted, namely :—

- (aa) that such acquisition is needed for the construction of some building or work for a Company engaged or to be engaged in an industry which is essential to the life of the community or is likely to promote the economic development of the country ; or”

4. In section 41 of the principal Act,—

Amendment of
Section 4.

- (a) for the words “the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for, workmen employed by, the Company or for the provision of amenities directly connected therewith; or that the proposed acquisition is needed for the construction of a work and that such work is likely to prove useful to the public,” the words, brackets, letters and figures “the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40 shall be substituted.
- (b) in clause (4), the word “and” occurring at the end shall be omitted and after that clause the following clause shall be inserted, namely :—
- (4A) where the acquisition is for the construction of any building or work for a Company engaged or to be engaged in an industry which is essential to the life of the community or is likely to promote the economic development of the country, the time within which, and the conditions on which, the building or work shall be constructed or executed, and”

5. Notwithstanding any judgment, decree, order of any Court, every acquisition of land for a Company made or purporting to have been made under Part VII of the principal Act, before the commencement of this Ordinance shall, in so far as such acquisition is not for any of the purposes mentioned in clause (a) or clause (b) of sub-section (1) of section 40 of the principal Act, be deemed to have been made for the purposes mentioned in clause (aa) of the said sub-section, and accordingly every such acquisition and any proceeding, order agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of sections 40 and 41 of the principal Act, as amended by this Ordinance, were in force at all material times when such acquisition was made or proceeding was held or order

Validation of
Certain
acquisition.

was made or agreement was entered into or action was taken.

S. RADHAKRISHNAN
President.

APPENDIX III

The Land Acquisition (Amendment and Validation) Ordinance No. 1 of 1967.

(See notes under S. 6, page 122, *ante*.)

APPENDIX IV

The Land Acquisition (Amendment and Validation) Act No. 13 of 1967

(See notes under S. 6, page 122, *ante*.)

APPENDIX V

The Constitution (Twenty Fourth Amendment) Act, 1971

[5th November, 1971]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows :—

Short Title

1. This Act may be called the Constitution (Twenty-fourth Amendment) Act, 1971.

Amendment
of article 13:

2. In article 13 of the Constitution, after clause (3), the following clause shall be inserted, namely :—

“(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368”.

Amendment
of article 368.

3. Article 368 of the Constitution shall be re-numbered as clause (2) thereof, and—

(a) for the marginal heading to that article, the following marginal heading shall be substituted, namely :—

“Power of Parliament to amend the Constitution and procedure therefor” ;

(b) before clause (2) as so re-numbered, the following clause shall be inserted, namely :—

“(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its con-

stituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.” ;

(c) in clause (2) as so re-numbered, for the words “it shall be presented to the President for his assent and upon such assent being given to the Bill,” the words “it shall be presented to the President who shall give his assent to the Bill and thereupon” shall be substituted ;

(d) after clause (2) as so re-numbered, the following clause shall be inserted, namely :—

“(3) Nothing in article 13 shall apply to any amendment made under this article.”

STATEMENT OF OBJECTS AND REASONS

The Supreme Court in the well-known *Golak Nath's* case [1967, 2 S. C. R. 762] reversed, by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution including Part III relating to fundamental rights. The result of the judgment is that Parliament is considered to have no power to take away or curtail any of the fundamental rights guaranteed by Part III of the Constitution even if it becomes necessary to do so for giving effect to the Directive Principles of State Policy and for the attainment of the objectives set out in the Preamble to the Constitution. It is, therefore, considered necessary to provide expressly that Parliament has power to amend any provision of the Constitution so as to include the provisions of Part III within the scope of the amending power.

2. The Bill seeks to amend article 368 suitably for the purpose and makes it clear that article 368 provides for amendment of the Constitution as well as procedure therefor. The Bill further provides that when a Constitution Amendment Bill passed by both Houses of Parliament is presented to the President for his assent, he should give his assent thereto. The Bill also seeks to amend article 13 of the Constitution to make it inapplicable to any amendment of the Constitution under article 368.

Notes

The Constitution 24th and 25th Amendment Acts require ratification by at least one-half of the State Legislatures after being passed by both houses of Parliament and then the President's assent will be given

and only thereafter these will become full-fledged laws, as provided in Art. 368.

Amendment of Art. 13 :—It should be noted that so far as Art. 13 is concerned only a Clause viz., Clause (4) is inserted after Clause (3). There is no other change.

Amendment of Art. 368 :—Article 368 after the aforesaid amendment runs as follows :—

Power of
Parliament to
amend the
Constitution and
procedure
thereon.

“368. (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill,

Provided that if such amendment seeks to make any change in—

- (a) articles 54, 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, Chapter 1 of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in this article 13 shall apply to any amendment made under this article.”

The effect of the amendment :—In *Golaknath's case* (a) it was clearly laid down that “since a Constitution Amendment Act is a ‘law’ made under Art. 248, it must be subject to Art. 13 (2) and would therefore be void if it seeks to amend a fundamental right. It must therefore be held that a fundamental right can not be amended by passing a law under Art. 368.” The effect of the amendment by insertion of the new Clause (4) in Art. 13 is that the bar imposed by Art. 13 will not apply to any law for amendment of this

Constitution made under Art. 368 even if it takes away or abridges any of the fundamental rights envisaged in Part III. Both the constituent power and the legislative power are thus conferred on the Parliament. The object of the amendment is "to provide expressly that Parliament has power to amend any provision of the Constitution so as to include the provisions of Part III within the scope of its amending power." So long as the view in Golaknath's case is not upset by the Supreme Court it was binding on everybody including the Parliament although it can make fresh enactment and which it did by amending the articles 13 and 368 overriding the view of the Supreme Court, thus bypassing the judiciary according to its convenience. For the present we shall have to proceed on the basis of the new Amendment Acts. But it may be noted that all other laws in force at the commencement of the Constitution in so far as they are inconsistent with the provisions of Part III or any other law subsequently passed and abridging any of the fundamental rights, shall to the extent of the contravention of provisions of laws framed under this Amendment Act, be void.

No retrospective effect :—This Amendment Act has not been given retrospective effect, with the result that all proceedings pending under laws existing from before the date of the commencement of this Amendment Act, will not be affected, but all other laws e. g., Land Acquisition Act or Requisitioning and Acquisition Acts etc., may be amended to bring them in conformity with this Act with effect from the date of such amendment.

President's power curtailed :—The President's power to withhold consent even if he thinks it necessary for the good of a section of the people, is taken away in so far as any amendment of the Constitution is concerned but not so far as other laws are concerned and which are governed by Art. 111 of the Constitution. Though a President, as President when he is presumed not to belong to any political party but only in duty bound to protect the Constitution, will not be able to do so now, his veto power is being taken away.

Controversy over judgment in Golak Nath's case :—Good deal of controversies have been raised over the said judgment and good deal of inappropriate remarks were hurled at the judiciary. So long we knew that the proper forum to challenge the correctness of a decision of a court was either the Parliament or the judiciary itself or in a private academic forum. But now things are otherwise. There is good reason to believe that we lowered the prestige of the judiciary. The Judgment may

be right or wrong but it should be agitated in proper manner and in proper forum. After all, if the prestige of judiciary is brought down, nothing remains. The following two views are summarily reproduced, as they are of much interest.

The view of former Chief Justice Mr. Hidayatullah :—

*New Delhi, Feb. 18.—The Former Chief Justice of India, Mr. M. Hidayatullah, said that the Supreme Court's judgment in the Golaknath case was not prompted by any political motives as insinuated by some people. Delivering the Sri Ram Memorial Lecture on "The Constitution : Parliament and the Court", he quoted from his judgment in the Golaknath case : "The history of freedom is not only how freedom is achieved but how it is preserved". Mr. Hidayatullah said our written Constitution lays down that fundamental rights shall not be taken away or abridged by the State and there is a guaranteed method for redress when they are so treated. Every action of Parliament or the State Legislature raised a judicial and not a political question : Have the fundamental rights been breached ? The question whether the fundamental rights have been breached or not does not depend on the strength of voting in Parliament or a Legislature but upon the way the law made an inroad into the basic rights, Mr. Hidayatullah stated. The theory of an electoral mandate followed in some other countries did not apply in our country as the people did not give their consent to the repeal of the chapter of fundamental rights. He said the people must be told about a particular change and made to vote on that issue before one could say that there was some sort of an electoral mandate. Referring to the constitutional amendments on fundamental rights, he said the change was very drastic and had altered the entire symmetry of the Constitution. It had removed every check on the power of Parliament in the two Houses which the Constituent Assembly had placed. The veto of the courts had been taken away and the President had surrendered his veto to parliamentary enactments. He repeated his stand that it was a mistake to shelter the property right as a fundamental right. He said : "It is the weakest right and enjoyed by the concession of the State." The method by which progressive ideas could be implemented within the dicta of the courts was to be preferred to an attempt at overriding the judiciary.

†The view of Dr. P. B. Gajendragadkar :—

The Chairman of the Law Commission, Dr. P. B. Gajendragadkar, said in Calcutta that the fundamental rights enshrined in the Indian Constitution were not intended to be absolute. He said that the scheme of the Articles in Part III, particularly Articles 19 and 31, intended that within the framework of the fundamental rights, the directive principles enshrined in Part IV of the Constitution must be implemented. If for reconciling the implementation of the directive principles, the framework of the fundamental rights, as originally devised, was found to be rigid, it would be necessary to change the said framework and when necessary to amend the fundamental rights.

As Tagore Law Professor of Calcutta University, the former Chief Justice of the Supreme Court said the Indian Constitution was based on the principle that a rational synthesis be found between two or more conflicting ideas.

While discouraging the introduction of political overtones in this academic debate, he said that after deep deliberations he had come to the conclusion that the views expressed by him as Chief Justice in the *Sajjan Singh's Case*, in 1965, were correct and that the majority verdict in the *Golaknāth Case* does not correctly represent the true constitutional position in the matter. The answer lay in a fair and reasonable construction of Article 368 in Part XX as well as Article 13(2) of Part III of the Constitution; he observed.

He justified the First Amendment of the Constitution in view of Devarajan's case and Ramesh Thapar's case (1950 S. C. R. 594) and Bharati Press's case. With regard to Fourth Amendment he said that the word 'compensation' came to be interpreted in Bela Banerjea's case as just and fair compensation which the Parliament felt that was not what the Constituent Assembly had intended and so Art. 31 (2) was amended. Political thinkers said that the power to amend the Constitution acted as a safety valve and thereby prevent violent revolutions. The analogy of British Parliament had no relevance in a discussion of the Indian problem, as, the British Parliament was a constituent Assembly in a continuous session and so there was no material difference between its constituent powers and legislative powers. A fair construction of words of Art. 368 itself showed that the article conferred on Parliament the power to amend the Constitution as also

† Published in the Statesman dated 22, 2. 72

prescribed the procedure for it. Art. 5 of the American Constitution and S. 128 of the Australian Constitution and S. 96 of the Japanese Constitution were substantially similar to Art. 368 of the Indian Constitution and in those Constitutions it was held that the Parliament had the power to amend any part of the Constitution. Finally he said that Sankari Prasad's case and Sajjan Singh's case were correctly decided. He did not agree that the Parliament can not sit as a Constituent Body or that it could bring into existence a Constituent Assembly.

APPENDIX VI

The Constitution (Twenty Fifth Amendment) Bill 1971

¹ (As passed by both Houses of Parliament)

Bill No. 106 of 1971

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows :—

Short title

1. This Act may be called the Constitution (Twenty-fifth Amendment) Act, 1971.

Amendment of article 31.

2. In article 31 of the Constitution,—

(a) for clause (2), the following clause shall be substituted, namely :—

“(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law ; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash.” ;

1. Appears to be pending before the State Legislatures to which it has been referred to for ratification.

(b) after clause (2A), the following clause shall be inserted, namely :—

“(2B) Nothing in sub-clause (f) of clause (1) of article 19 shall affect any such law as is referred to in clause (2).”

3. After article 31B of the Constitution, the following article shall be inserted, namely :—

“31C. Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 ; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy :

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.”

Insertion of new article 31C.

Saving of laws giving effect to certain directive principles.

STATEMENT OF OBJECTS AND REASONS

Article 31 of the Constitution as it stands specifically provides that no law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given shall be called in question in any court on the ground that the compensation provided by that law is not adequate. In the *Bank Nationalisation case* [1970, 3 S. C. R. 530], the Supreme Court has held that the Constitution guarantees right to compensation, that is, the equivalent in money of the property compulsorily acquired. Thus in effect the adequacy of compensation and the relevancy of the principles laid down by the Legislature for determining the amount of compensation have virtually become justiciable inasmuch as the Court can go into the question whether the amount paid to the owner of the property is what may be regarded as compensation for loss of property. In the same case, the Court has also held that a law which seeks to acquire or requisition property for a public purpose should also satisfy the requirements of article 19(1)(f)."

2. The Bill seeks to surmount the difficulties placed in the way of giving effect to the Directive Principles of State

Policy by the aforesaid interpretation. The word "compensation" is sought to be omitted from article 31(2) and replaced by the word "amount". It is being clarified that the said amount may be given otherwise than in cash. It is also proposed to provide that article 19(1)(f) shall not apply to any law relating to the acquisition or requisitioning of property for a public purpose.

3. The Bill further seeks to introduce a new article 31C which provides that if any law is passed to give effect to the Directive Principles contained in clauses (b) and (c) of article 39 and contains a declaration to that effect, such law shall not be deemed to be void on the ground that it takes away or abridges any of the rights contained in articles 14, 19 or 31 and shall not be questioned on the ground that it does not give effect to those principles. For this provision to apply in the case of laws made by State Legislatures, it is necessary that the relevant Bill should be reserved for the consideration of the President and receive his assent.

Notes

The Constitution (Twenty-fifth Amendment) Act, 1971 is meant not only to supersede the judiciary in Golaknath's case but also in the Bank Nationalisation case (1970, 3 S. C. R. 530). The principal object was "to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the aforesaid interpretation". The word 'compensation' was omitted and replaced by the word 'amount'. The new Article 31C protects any law passed to give effect to the Directive Principles. *See the Statement of Objects and Reasons.*

Effect of the amendment :—This Amendment Act has changed the word 'compensation' into the word 'amount'. A law shall have to be passed providing for acquisition or requisitioning for an amount which may be fixed by such law or which may be determined in accordance with principles laid down therein and given in such manner as may be specified in such law. The word 'amount' has not been defined. It is an ambiguous word which may mean any amount which may be fair or not in relation to the value of the property acquired and further it may not be paid in cash. Further the intention seems to be to pass laws only to give effect to Part IV of the Constitution and not other laws. The intention to pay a nominal or lesser compensation for the property acquired or requisitioned, thereby depriving the owners of their legitimate dues, is nowhere expressed directly or indirectly. Further the jurisdiction of the Courts is ousted from considering the *vires* of such

laws. So, there are many controversial things that require clarification by the judiciary. The validity of the last part of the Art. 31C ousting the jurisdiction of Courts from considering whether a law passed under that Article was for giving effect to such policy or not, seems to be very doubtful. It seems that even after this declaration it would be competent for the Courts to examine the question of nexus between the impugned law and its intended objective and if the Court is satisfied that no such nexus existed, the law may be struck down, as a fraud on the Constitution.

Statement of Objects and Reasons—how far relevant for the purpose of interpreting a Statute :—Generally a Statement of Object and Reasons seeks only to explain what reasons induced the mover to introduce the Bill and what objects he sought to achieve, but it was ruled out as an aid to the construction of a Statute, (a). But Bhagwati J. used the Objects and Reasons for construing and interpreting a Statute, (b). It is also utilised in Kochuni's case, (c). There is no indication in the present Statement of Objects and Reasons that the principal intention was to pay illusory compensation and deprive the owners of their legitimate dues.

'Amount' :—Like the word 'compensation, the word 'amount' is also required to be interpreted by the Courts. Whether this amount should be a reasonable figure in lieu of loss and damages suffered by an owner or any figure however nominal it may be, that may be fixed by an Act, is the question. No Court can be expected to make an unreasonable construction. Both the substantive as well as the procedural aspects of the reasonableness of the amount shall have to be considered, (d). The principle that it is not open to the legislatures to lay down principles which may result in non-payment of compensation, as laid down in Vajravelu's case and Jagveera's case, (e), will still hold good.

(a) *Aswtni Kumar v. Arabinda Bose* A. I. R. 1952 S. C. 369 : *State of West Bengal v. Union of India* A. I. R. 1963 S. C. 1241 : *State of West Bengal v. Subodh Gopal Bose* A. I. R. 1954 S. C. 92.

(b) *M. K. Ranganathan v. Govt. of Madras*. A. I. R. 1955 S. C. 604 : *I. T. Commr. v. Sadra Devi* A. I. R. 1957 S. C. 832 (839).

(c) *K. K. Kochuni v. State of Madras*, A. I. R. 1960 S. C. 1080 (1086).

(d) *State of Madras v. Row*, 1952 S. C. R. 597 : *State of M. P. v. Baldeo*, A. I. R. 1961 S. C. 293 : *Virendra v. State of Punjab*, 1957 S. C. R. 308.

(e) *Vajravelu's case*, A. I. R. 1960 S. C. 1080 : *N. B. Jeejeebhoy v. Asst. Collector*, A. I. R. 1965 S. C. 1096 : *Jagveera v. State of Madras*, A. I. R. 1954 S. C. 257.

So it seems that the word 'amount' can not be any arbitrary amount but that it should have a reasonable relationship to the fair market value of the property acquired.

APPENDIX VII

The Constitution (Amendment) Act, 1971 (Bill)

(Published in Gazette of India Ext., dated 23-7-71)

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 23rd July, 1971 :—

Bill No. XVI of 1971

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows :—

Short title.

1. This Act may be called the Constitution (Amendment) Act, 1971.

Amendment of
article 145.

2. In article 145 of the Constitution,—

(i) in clause (3), after the existing proviso, the following proviso shall be inserted, namely :—

“Provided further that when any case or a reference under article 143 involves a decision on the validity or otherwise of a law made by Parliament amending any provision of this Constitution, such matter shall be decided by a full Court consisting of as far as may be the Chief Justice and all Judges of the Supreme Court.”

(ii) to clause (5) the following provisos shall be added, namely :—

“Provided that when a full Court sits, the majority judgment shall have the concurrence of not less than two-thirds of the number of Judges present at the hearing of the case :

Provided further that no such concurrence shall be necessary when the full Court is making a report under article 143 or exercising its power of review conferred by article 137 of a judgment invalidating a law made by Parliament amending any provision of this Constitution.”

STATEMENT OF OBJECTS AND REASONS

The judgment rendered by the Supreme Court in *Golaknath's case* had held the Fourth and Seventeenth Amendments to the Constitution invalid with prospective effect, and disables Parliament from making any law reducing or taking away any of the fundamental rights including such law by way of an amendment to the Constitution. Parliamentary opinion and public opinion in the country are strongly against the position resulting from the said judgment. Earlier, the Supreme Court had ruled in its decisions in *Sankari Prasad's case* and *Sajjan Singh's case* that Parliament has such power and such law is valid.

The difficulty created by the decision in *Golaknath's case* cannot be solved by Parliamentary legislation including amendment of the Constitution. Even the Bill of the late Shri Nath Pai as reported by the Joint Select Committee is inadequate to meet the purpose. The difficulty can be resolved only by a rethinking by the Supreme Court itself either in a case or on a reference or review. A major Bill relating to amendment of the Constitution restricting or taking away certain forms of private property rights including compensation and abolition of privy purses and privileges of ex-rulers, is likely to come to the anvil of Parliament in due course. Such a Bill has necessarily to come from the Government side. The present Bill would pave the way for the successful implementation of such legislation when passed and which is a *sine qua non* for building up a socialist society.

The purpose of this Bill is to confine invalidating of Parliamentary legislation in relation to amendment of the Constitution to cases where two-thirds of all the Judges of the Supreme Court were to decide on invalidation, and not on the basis of a simple majority as at present. It is for this purpose that the Bill provides that a full Court, as far as possible, of all the Judges should hear and decide such cases and not a minimum of five Judges only as at present. So two-thirds of the full Court has to concur to strike down an amendment of the Constitution. The necessity to constitute a full Court will apply also to a review under Article 137 and a reference under Article 143. However, when such review or reference is on a judgment invalidating a Parliamentary law of constitutional amendment, the review or reference can be decided by a simple majority of the full Court. This would pave the way for a simple majority of all Judges of the Supreme Court to depart from the decision in *Golaknath's case* and restore the position

secured by the decision in *Sankari Prasad's* case and *Sajjan Singh's* case referred to above.

Notes

The object of the above amendment is also clear from the Statement of Objects and Reasons. In a reference by the President under Art. 143 or in any other case wherein is involved the question of validity or otherwise of a law made by Parliament by amending any provision of the Constitution, the Supreme Court shall have to decide it in its Full Court and that the majority judgment must have the concurrence of not less than two-thirds of the number of judges present at the hearing. No such concurrence is necessary in other cases or in cases of report under Art. 143.

The American Constitution provides for simple majority as also the British procedure in Privy Council or House of Lords. In Japan a judgment must have to be approved by a majority of at least 9 out of 15 judges.

While two-third majority is provided for deciding validity of a law made after amending the Constitution, a simple majority is required for reviewing its own judgment and which is deliberately provided so as to enable the Supreme Court to overrule *Golaknath's* case by a simple majority. When the majority does not equal to two-third, the judgment is no judgment even though there is good deal of majority. So, if 9 judges out of 15 judges are in majority, their judgment is of no value because the power of veto is vested in six other judges. So, it is the number having veto power that counts and not the quality. Although it is true that sometimes it is seen that minority judgments are correct but that does not mean that it is always so, nor it is true that simple majority judgments are in most cases incorrect. Error there may always be, but to kill the truth by veto in judicial field, is something else than administration of justice. Besides, in a way, it shows a lack of confidence in the judges who are to be bestowed with all the respect and confidence of the people.

PART II

CENTRAL LEGISLATIONS

CHAPTER I

The Coal-Bearing Areas (Acquisition and Development) Act, 1957 (Act No. 20 of 1957)

(As amended up to 1969)

The Act came into force on the 12th June 1957.

(The following Act of Parliament received the assent of the President on 8th June 1957 and was published in the Gazette of India, Extraordinary, Part II Sec. 1 No. 18 dated 10th June 1957)

An Act to establish in the economic interest of India, greater public control over the Coal-mining industry and its development by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits or of rights in or over such land, for the extinguishment or modification of such rights accruing by virtue of any agreement, lease, licence or otherwise, and for matters connected therewith.

Be it enacted by Parliament in the Eighth year of Republic of India as follows:

1. **Short title, extent and commencement.**—(1) This Act may be called the Coal-Bearing Areas (Acquisition and Development) Act., 1957.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Definitions—In this Act, unless the context otherwise requires—

(a) competent authority means any person appointed to be a competent authority under Sec. 3;

(b) "Government Company", means a Government Company as defined in Sec 617 of the Companies Act, 1956 in which any land or rights in or over the land shall have vested under Sec. 11 ;

(c) "Mineral Concession Rules" means the rules for the time being in force made under the Mines and Minerals Regulation and Development Act, 1948 (53 of 1948) ;

(cc) "mining lease" includes a mining sub-lease, and "lessee" shall be construed accordingly ; [cl. (cc) inserted by Act 51 of 1957]

(d) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land, or of the acquisition, extinguishment or modification of any rights in or over the land, under this Act ;

- (e) "prescribed" means prescribed by rules made under this Act ;
- (f) "tribunal" means the tribunal constituted under Sec. 14.

4. Preliminary notification respecting intention to prospect for coal in any area and persons of competent authorities thereupon—

- (1) whenever it appears to the Central Government that coal is likely to be obtained from land in the locality it may, by notification in the official Gazette, give notice of its intention to prospect for coal therein.
- (2) Every notification made under sub-sn. (1) shall give a brief description of the land and state its area.
- (3) On the issue of a notification under sub-sec (1), it shall be lawful for the competent authority and for his servants and workmen—

- (a) to enter upon and survey any land in such locality ;
- (b) to dig or bore in the sub-soil.
- (c) to do all other acts necessary to prospect for coal in the land.
- (d) to set out the boundaries of the land in which prospecting is proposed to be done and the intended line of work, if any, proposed to be made thereon ;
- (e) to make such boundaries and line by placing marks ;
- (f) where otherwise the survey cannot be completed and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle ;

Provided that no person shall enter into any building or upon enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

- (4) In issuing a notification under this section the Central Government shall exclude therefrom that portion of any land in which coal mining operations are actually being carried on in conformity with the provisions of any enactment, rule or order for the time being in force or any premises on which any process ancillary to the getting, dressing or preparation for sale of coal obtained as a result of such operations, is being carried on, are situate.
[For cases under Sections 4, 7 & 9 see. (a)].

5. Effect of notification on prospecting licenses and mining leases—On the issue of a notification under sub-sec. (1) of sec. 4 in respect any land—(a) any prospecting license ¹[which authorises any person] to prospect for coal or any other mineral in land shall cease to have effect ; and

(a) *Rajendra Collieries Ltd. v. Coal Controller*, A. I. R. 1960 Cal. 736 : *Khas Karanpura Colliery Ltd. v. Union of India*, A. I. R. 1965 Pat. 305 : *Surendra Narain Banerjee v. National Coal Dev. Corpn. Ltd.* 1965 B. L. J. R. 224 ; *State of West Bengal v. Union of India*, A. I. R. 1963 S. C. 1241.

1. Substituted by Act, 51 of 1957.

(b) any mining lease ²[* * *] shall, so far as it authorises the lessee or any person claiming through him to undertake any operation in the land, cease to have effect for so long as the notification under that sub-section is in force.

6. Compensation for any necessary damage done under sec. 4—

(1) Whenever any action of the nature described in sub-sec. (3) of sec. 4 is to be taken, the competent authority shall before or at the time such action is taken, pay or tender payment for all necessary damage which is likely to be caused; and in case of dispute as to the sufficiency of the amount so paid or tendered or as to the person to whom it should be paid or tendered he shall at once refer the dispute to the decision of the Central Government, and the decision of the Central Government shall be final.

(2) The fact that there exists any such dispute as is referred to in this section shall not be a bar to action under sub-sec. (3) of sec. 4.

7. Power to acquire land or rights in or over land notified u. s. 4.—

(1) If the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under sub-sec. (1) of sec. 4, it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggregate as the Central Government may specify in this behalf, by notification in the official Gazette, give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land, as the case may be.

(2) If no notice to acquire the land or any right in or over such land is given under sub-sec. (1) within the period allowed thereunder, the notification issued under sub-sec. (1) of sec. 4 shall cease to have effect on the expiration of three years from the date hereof.

8. Objection to acquisition :—(1) Any person interested in any land in any respect of which a notification under sec. 7 has been issued may, within thirty days of notification, object to the acquisition of the whole or any part of the land or of any rights in or over such land.

Explanation—It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operation in the land for the production of coal and that such operations should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-sec. (1) shall be made to the competent authority in writing, and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Central Government together

with the record of the proceedings held by him and a report containing his recommendations on the objections.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act.

9. **Declaration of acquisition**—(1) When the Central Government is satisfied, after considering the report, if any, made under sec. 8 that any land or any right in or over such land should be acquired, a declaration shall be made by it to that effect ;

Provided that where the declaration relates to any land or to any rights in or over land belonging to a State Government which has or have not been leased out, no such declaration shall be made except after previous consultation with the State Government.

(2) The declaration shall be published in the official Gazette, and—

(a) in any case where land is to be acquired, shall state the district or other territorial division in which the land is situate and its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected ;

(b) in any case where rights in or over such land are to be acquired shall state the nature and extent of the rights in addition to the matters relating to the land specified in clause (a) and a copy of every such declaration shall be sent to the State Government concerned.

9A. *Special powers in cases of urgency*—If the Central Government is satisfied that it is necessary to acquire immediately the whole or any part of the land notified under sub-section (i) of section 4 or any rights in or over such land, the Central Government may direct that the provisions of section 8 shall not apply, and if it does so direct, a declaration may be made under section 9 in respect thereof at any time after the issue of the notification under section 7. (inserted by Act 51 of 1957).

10. **Vesting of land or rights in Central Government**—(1) On the publication of official Gazette of the declaration under sec. 9, the land or the rights in or over the land as the case may be shall vest absolutely in the Central Government, ¹[free from all encumbrances]. (2) Where the rights under any mining lease ²[granted or deemed to have been granted by a State Government] to any person, are acquired under this Act, the Central Government shall, on and from the date of such vesting, be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules had been granted by the State Government to the Central Government, the period thereof being the entire period for which such a lease could have been granted by the State Government under those rules.

11. **Power of Central Government to direct vesting of land or rights in a Government Company**—(1) Notwithstanding anything contained in

1. Inserted by Act 51 of 1957.

2. Substituted by Act 51 of 1957.

sec, 10, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and condition as the Central Government may think fit to impose, direct by order in writing, that the land or the rights in or over the land, as the case may be, shall, instead of vesting in the Central Government under sn. 10 or continuing to so vest, vest in the Government Company either on the date of publication of the declaration or on such other date as may be specified in the direction.

(2) Where the rights under any mining lease acquired under this Act vest in a Government company under sub-sn. (1), the Government company shall, on and from the date of such vesting be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules had been granted by the State Government under those rules and all the rights and liabilities of the Central Government in relation to the lease or land covered by it shall, on and from the date of such vesting, be deemed to have become the rights and liabilities of the Government company.

12. Power to take possession of land acquired—The competent authority may, by notice in writing, require any person in possession of any land acquired under this Act to surrender or deliver possession of of the land within such period as may be specified in the notice, and if a person refuses or fail to comply with any such notice, the competent authority may enter upon and take possession of the land, and for that purpose may use or cause to be used such force as may be necessary,

13. Compensation for prospecting licenses ceasing to have effect on rights under mining leases being acquired, etc.—(1) Where a prospecting licence ceases to have effect under sec. 5 there shall be paid to the person interested, compensation the amount of which shall be a sum made up of all items of reasonable and bona fide expenditures actually incurred in respect of the land, that is to say,—

(i) The expenditure incurred in obtaining the licence ;

(ii) The expenditure, if any, incurred in respect of the preparation of maps, charts and other documents relating to the land, the collection from the land of ores or other mineral samples and the due analysis thereof and the preparation of any other relevant records or material ;

(iii) the expenditure, if any incurred in respect of the construction of roads or other essential works on the land, if such roads or works are in existence and in a usable condition ;

(iv) the expenditure, if any, incurred in respect of any other operation necessary for prospecting carried out in the land.

(2) Where the rights under a mining lease are acquired under the Act, there shall be paid to the person interested compensation, the amount of which shall be made up of following items namely :—

(i) if the lease was granted after prospecting operations had been carried out in respect of the land under a prospecting licence, the sum of all items of reasonable and *bona fide* expenditures actually incurred with respect to the matters specified in clauses (i), (ii), (iii) and (iv) of sub-sec. (1) before the date of the lease ;

Provided that where two or more leases had been granted in relations to any land covered previously by one prospecting licence, only so much of the expenditure aforesaid as bear to the total expenditure the same proportion as the area under the mining lease in respect of which the rights have been acquired bear to the total area covered by the mining leases shall be payable under this clause ;

(ii) any reasonable and bone fide expenditure of the nature referred to in clauses (i), (ii), and (iii) of sub-sec. (1) actually incurred in relation to the lease, together with the selami, if any, paid for obtaining the lease ;

(iii) the expenditure, if any, incurred by way of payment of dead-rent of minimum royalty during any year or years when there was no production of coal ;

(iv) interest on any such expenditure referred to in clauses (i), (ii) and (iii) as has actually been incurred [up to] and ending with the year in which the rights under the lease are acquired, interest being calculated in the following manner, that is to say,—interest at the rate of five per centum per annum in respect of the expenditure incurred, during each calendar year for the first five years commencing from the year in which such expenditure was incurred plus interest at the rate of four per centum per annum in respect of each subsequent year after the expiration of the first five years and ending with the year in which the rights under the lease are acquired ;

Provided that the total sum payable under this clause shall not exceed one-half of the total amount referred to in ¹[clauses (i), (ii) and (iii)].

(3) Where the rights under a mining lease acquired under Sec. 9 relate only to a part of the land covered by the mining lease, the amount of compensation payable shall be such as bears to the total compensation which would have been payable if the rights of the mining lease in respect of the entire land had been acquired, the same proportion which the area of the land in respect of which the rights are acquired bears to the total area of the land covered by the mining lease.

(4) Where a mining lease ceases to have effect for any period under clause (b) of Sec. 5, there shall be paid by way of compensation for the period during which the lease so ceased to have effect, a sum equivalent to five per centum of any such expenditure as is referred to in clauses (i) and (iii) of sub-sec. (2) for each year during which the lease remains suspended.

(5) Where any land is acquired under Sec. 9, there shall be paid compensation to the person interested the amount of which shall be determined after taking into consideration—

(a) the market value of the land at the date of the publication of the notification under sub-section (1) of Sec. 4 ;

Explanation—The value of any minerals lying in the land shall not be taken into consideration in determining the market value of any land ;

- (b) the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the taking possession thereof ;
- (c) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of severing such land from other land ;
- (d) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any other manner, or his earnings ;
- (e) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change ; and
- (f) the damage, if any, *bona fide* resulting from diminution of the profits of the land between the time of the publication of the notification under sub-sec. (1) of sec. 4 and the time of the publication of the declaration under sub-sec. (2) of Sec. 9.

(6) Where any operation carried on by or on behalf of the Central Government in the exercise of any powers conferred by this Act causes or is likely to cause damage to the surface of any land or any works thereon and in respect thereof no provision for compensation is made elsewhere in this Act, the competent authority shall pay or tender payment for all such damage, and in case of dispute as to the sufficiency of the amount so paid or tendered or as to the person to whom it is to be paid or tendered, he shall refer the dispute to the decision of the Tribunal.

(7) No compensation under this section in relation to maps, charts and other documents shall be paid unless the person to whom it is payable has delivered to the prescribed authority all the maps, charts and other documents.

14. Method of determining compensation.—(1) Where the amount of any compensation payable under this Act can be fixed by agreement, it shall be paid in accordance with such agreement.

(2) Where no such agreement can be reached, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a judge of a High Court for the purpose of determining the amount.

(3) The Central Government may in any particular case nominate a person having expert knowledge in mining to assist the Tribunal, and where such nomination is made, the person or persons interested may also nominate any other person for the same purpose.

(4) At the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is a fair amount of compensation.

(5) The Tribunal shall, after hearing the dispute, make and award determining the amount of compensation which appears to it to be just, and specify the person or persons to whom the compensation shall be paid ; and in making the award the Tribunal shall have regard to the

circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined in so far as the said provisions or any of them may be applicable.

(6) Where there is a dispute as to the person or persons entitled to compensation and the Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit.

(7) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to any proceedings under this section.

15. Costs.—Every award made by the Tribunal shall also state the amount of costs incurred in the proceedings before it and by what person and in what proportions they are to be paid.

16. Interest on awards.—If the sum which in the opinion of the Tribunal ought to have been awarded as compensation is in excess of the sum which the Central Government has stated to be a fair amount of compensation, the award of the Tribunal may direct that the Central Government shall pay interest on such excess at the rate of five per centum per annum from the date on which it became payable to the date of payment of such excess.

17. Payment of compensation.—(1) Any compensation payable under this Act may be tendered or paid to the persons interested entitled thereto, and the Central Government shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-sec. (2).

(2) If the persons interested entitled thereto shall not consent to receive it or if there be any dispute as to the sufficiency of the amount of compensation or the title to receive it or the apportionment thereof, the Central Government shall deposit the amount of compensation with the Tribunal ;

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that no person who has received the amount otherwise than under protest shall be entitled to take any matter under this Act before the Tribunal.

(3) When the amount of compensation is not paid or deposited as required by this section, the Central Government shall be liable to pay interest thereon at the rate of five per centum per annum from the time the compensation became due until it shall have been so paid or deposited.

18. Prospecting and mining to be done by Central Government in conformity with the Mineral Concession Rules.—Where prospecting is done under this Act by or on behalf of the Central Government in any land situate within the jurisdiction of a State Government or where the Central Government or a Government Company has become the lessee of a State Government in respect of any land under this Act, the terms and conditions under which the prospecting can be done or rights under the lease exercised shall, as far as may be, be the same as the terms and conditions applicable to prospecting licences and mining leases under the Mineral Concession Rules; and in case of doubt or dispute, it shall be settled by

arbitration or in such other manner as the Central Government and the State Government may decide.

19. Power to delegate.—The Central Government may, by notification in the official Gazette, direct that all or any of the powers or duties which may be exercised or discharged by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised or discharged also by any person specified in this behalf in the notification; and any such person may, with the previous approval of the Central Government, by order in writing, direct that any power or duty which has been directed to be exercised or discharged by him shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any such person subordinate to him as may be specified therein.

20. Appeals.—(1) Any person aggrieved by any award of the Tribunal under Sec. 14 may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the land or some portion of the land which has been acquired or some portion of the land covered by prospecting licence or by a mining lease in respect of which mining rights have been acquired is situate.

(2) Any person aggrieved by an order made by a competent authority or by any other person in virtue of any powers exercisable by him under this Act may, within twenty-one days from the date of the order, prefer an appeal to the Central Government.

(3) On receipt of an appeal under sub-sec. (2), the Central Government may after calling for a report from the competent authority or person concerned, and giving an opportunity to the parties to be heard, and after making such further inquiry as may be necessary, pass such orders as it thinks fit, and the order of the Central Government shall be final.

(4) Where an appeal is preferred under sub-sec. (2), the Central Government may stay the enforcement of the competent authority or person concerned for such period and on such conditions as it thinks fit.

21. Power to obtain information.—The Central Government or any person authorized in writing by it in this behalf may, by order in writing, require any person to furnish to such authority as may be specified in the order such information in his possession as may be required relating to any property in respect of which action is proposed to be taken under this Act.

22. Power to enter and inspect.—The competent authority, or any person authorized in writing by it in this behalf, by general or special order, may enter and inspect any property for the purpose of determining whether and, if so, in what manner an order under this Act should be made in relation to any property or with a view to securing compliance with any order made under this Act.

23. Penalties.—Whoever wilfully obstructs any person in doing any of the acts authorized by sub-sec. (3) of Sec. 4 or wilfully fills up, destroys, damages or displaces any mark made under Sec. 4 or wilfully obstructs the lawful exercise of any other power conferred by or under this Act, or fails to comply with any order made or direction given under

this Act, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

24. Service of notices and orders.—Subject to any rules that may be made under this Act, every notice or order issued or made under this Act shall—

- (a) in the case of a notice or order of a general nature or affecting a number of persons, be notified in the official Gazette and also published in the locality in such manner as may be prescribed ; and
- (b) in the case of a notice or order directed to an individual,—
 - (i) wherever it is practicable to do so by delivering or tendering it to that individual ; or
 - (ii) if it cannot be so delivered or tendered, by affixing it on the door or some other conspicuous part of the residence in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood ; or
 - (iii) failing service by these means, by post.

25. Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any person for thing which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Central Government or the competent authority or any other person for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

26. Jurisdiction of Civil Courts.—Save as otherwise expressly provided in this Act no Civil Court shall have jurisdiction in respect of any matter which the Central Government or the competent authority or any other person is empowered by or under this Act to determine.

27. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,—

- (a) the procedure to be followed in making any inquiry under this Act ;
- (b) the procedure to be followed by the Tribunal in proceedings under Sec. 14 ;
- (c) the form and manner in which appeals to the Central Government may be made under this Act ; and
- (d) any other matter which has to be, or may be, prescribed.

(3) All rules made under this section shall be laid for not less than thirty days before each House of Parliament as soon as may be after they are made and shall be subject to such modifications as Parliament may

make during the session in which they are so laid or the session immediately following.

28. Notifications under Act 1 of 1894 in which proceedings are pending to be treated as notifications under this Act.—(1) Every notification issued before the commencement of this Act, whether by the Central Government or by a State Government under Section 4 of the Land Acquisition Act, 1894 (I of 1894) (hereinafter referred to as the said Act), in which lands were stated to be needed for the prospecting of coal seems for the development of collieries to be worked by the Union of India shall be deemed to have been issued by the Central Government under Sec. 4 of this Act as if this Act had been in force on the date of the notification.

(2) Every notification issued before the commencement of this Act, whether by the Central Government or by a State Government under Sec. 6 of the said Act in which lands were stated to be needed for the development of coal shall be deemed to have been issued under Sec. 9 of this Act as if this Act had been in force on the date of the notification.

(3) Any objection preferred under Sec. 5-A of the said Act in respect of any land covered by any notification issued under Sec. 4 of the said Act shall be deemed to be an objection preferred under Sec. 8 of this Act to the relevant competent authority and may be ¹[disposed of by him as if the objection had been made in relation to a notification issued under section 7 of this Act in respect of such land] ²[or of any rights in or over such land; and the Central Government may at any time make a declaration under sec. 9 of this Act in respect of the land or any part thereof or any rights in or over such land or part].

²[(3A) Where in respect of any land covered by any notification issued under section 4 of the said Act, no objection has been preferred under section 5A thereof within the period specified in that section, then it shall be deemed that a notification had been issued under section 7 of this Act in respect of such land or of any rights in or over such land and that no objection to the acquisition of the land of any rights in or over the land had been preferred under section 8 of this Act, and accordingly the Central Government may at any time make a declaration under section 8 of this Act in respect of the land or any part thereof or of any rights in or over such land or part.]

³[**Validation of certain acquisitions.**—Notwithstanding any judgment, decree or order of any Court, every acquisition of land or the rights in or over the land made by Central Government in pursuance of the notifications of the Government of India in the late Ministry of Steel, Mines and Fuel (Department of Mines and Fuel) Nos. S. O. 1759 and S. O. 25 dated the 7th August 1958 and the 22nd December 1959 respectively, made under section 9 of the Principal Act, shall be and shall be deemed always to have been, as valid as if the provisions of section 28

1. Substituted by Act 51 of 1957.

2. Deemed always to have been substituted by Amendment Act 23 of 1969, s.2 (a).

3. This is section 3 of the Amendment Act 23 of 1969.

thereof as amended by this Act were in force at all material times when such acquisition was made and shall not be called in question in any court of law on the ground only that before issuing such notifications no notification was issued under section 7 of the Principal Act in relation to the land covered by the said notifications Nos. S. O. 1759 and S.O. 25.]

(4) Subject to the other provisions contained in the section, the provisions of this Act (including provisions relating to compensation) shall apply in relation to any such notification as is referred to in sub-sec. (1) or sub-sec. (2) as they apply in relation to any notification issued under section 4 or sec. 9, as the case may be, of this Act.

Notification (Enforcement) :—*Published in the Gazette of India, Extraordinary, Part II, Sec. 3. No. 315, dated the 10th June, 1957.*

Ministry of Steel, Mines and Fuel :—*S. R. O. 1931—New Delhi, the 10th June, 1957.*—In exercise of the powers conferred by sub-sec. (3) of Sec. 1 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) the Central Government hereby appoints the 12th day of June 1957 as the date on which the said Act shall come into force.

PART II

CHAPTER I-A

THE COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT) RULES, 1957

Published in the Gazette of India, Part II, Sec. 3, No. 25, dated the 22nd June, 1957.

Ministry of Steel Mines and Fuel :—*S. R. O. 2042—New Delhi, the 12th June, 1957.*—In exercise of the powers conferred by Sec. 27 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) the Central Government hereby makes the following rules, namely—

1. Short title and commencement—(1) These rules may be called the Coal Bearing Areas (Acquisition and Development) Rules, 1957.

(2) They shall come into force at once.

2. Definitions.—In these rules, unless the context or otherwise required :

(i) "the Act" means the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957).

(ii) "area" means the coal-bearing area which it is intended to prospect or acquire under the provisions of the Act ;

(iii) "section" means the section of the Act.

3. Mode of service of notice or order.—(1) Any notice or order required to be served under the Act, if of a general nature or affecting a number of persons, shall be published in the Official Gazette and due publication of such notice or order shall also be given by proclaiming it by beat of drum on or near the area by affixing a copy of it on some conspicuous place on or near the area.

(2) Any notice or order required to be served under the Act, if directed against an individual—

- (i) shall be served by delivering or tendering a copy thereof duly signed by the person on whom it is to be served or to his duly empowered agent..
- (ii) where the person on whom the notice or order is to be served cannot be found and, where such person has no agent empowered to accept service of notice or order, service may be made on any adult member of the family of such person residing with him;
- (iii) where the serving officer delivers or tenders a copy of the notice or order to the person to be served with such notice or order personally or to his agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered in token of the acknowledgment of the service of the original notice or order;
- (iv) where the person to be served with the notice or order or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer after using all due and reasonable diligence, cannot find the person to be served with the notice or order, and there is no agent empowered to accept service of the notice or order on his behalf nor any other person on whom service can be made, service may be effected by affixing a copy of the notice or order on the outer door or some conspicuous part of the house in which the person to be served with the notice or order ordinarily resides, or carries on business or personally works for gain or by affixing a copy of such notice or order to a conspicuous place on or near the area;
- (v) the serving officer shall, in all cases in which the notice or order has been served in the manner stated in clause (iv) endorse or annex or cause to be endorsed or annexed, on or to the original notice or order, a return witnessed by two persons living in the neighbourhood stating the date on which and the manner in which the notice or order was so served.

Every such substituted service shall be as effectual as if it had been made on the person concerned personally.

- (vi) Notwithstanding anything contained in clauses (i) to (v), the authority ordering the service of a notice or order may, if he thinks fit or when he finds that the service cannot be effected in any of the modes aforesaid, order that the notice or order shall be served by sending a copy thereof, duly signed, by registered post with acknowledgment due to the person on whom such notice or order is to be served at his last known address;

In case of such service an acknowledgment purporting to be signed by such person or his duly empowered agent or an

endorsement by a postal employee that such person or the agent refused to take delivery, may be deemed by the authority ordering service of such notice or order to be *prima facie* proof of service.

(vii) where the person to be served with notice or order is minor or a person of unsound mind, the notice shall be served in the aforesaid manner, on the guardian of such minor or person of unsound mind, as the case may be.

(3) Any notice or order required to be served under the Act if directed against a Corporation may be served—

(a) on the secretary, or on any director, or other principal officer of the Corporation, or

(b) by leaving it or sending it by post addressed to the Corporation at the registered office, or if there is no registered office, then at the place where the Corporation carries on business.

4. The procedure to be followed after issue of notification under Sec. 7.—

(1) On the publication in the official Gazette of a notification under Sec. 7, any person interested in any land in respect of which such notification has been issued may, within thirty days of the issue of the notification, make objection to the competent authority in writing.

(2) Every objection referred to in clause (1) shall contain a statement of the nature of the interest of the objector over the area to be acquired, and shall also contain a statement as to whether the objector is or is not in actual possession of such area. The objection shall be duly verified by the objector or his duly authorized agent. The objector shall submit along with the objection a list of documents, if any, on which he relies for establishing his objection. The objector shall also file along with his objection as many copies of the objection as are required by the competent authority.

(3) The competent authority on receiving the objection, if it complies with the requirements laid down in this rule, register such objection and fix a date for the hearing of the objection and give notice thereof to the objector as well as to all the parties interested in the area in respect of which the objection is filed. With every such notice a copy of the objection filed shall be annexed except in the case of the objector. Any party interested may file at least fifteen days before the date fixed by the competent authority for hearing of the objection, a statement by way of reply to the objection.

(4) On the date fixed for the hearing of the objection or any other date to which the hearing may be adjourned by the competent authority, the competent authority shall examine witnesses, if tendered on behalf of the objector or any other interested party.

(5) The proceeding before the competent authority shall be summary, and only the substance of the statement of parties or the statement of the witnesses, if any, shall be recorded.

(6) The competent authority shall, after hearing the arguments, if any, of the parties concerned, and after making such further inquiry as he thinks necessary, submit the case for decision of the Central Government together

with a record of the proceeding held by him and a report containing his recommendations on the objection.

5. Maps, charts, etc., to whom to be delivered.—All maps, charts and other documents referred to in sub-sec. (7) of sec. 13 shall be delivered to the competent authority concerned.

6. Deposit of compensation.—Where the amount of compensation including interest, if any, payable under the Act has to be deposited with the tribunal, such amount shall be deposited into the treasury for credit to the Deposit Account head “S—Deposits and Advances Civil Deposits—Coal Bearing Areas (Acquisition and Development) Tribunal, Madhya Pradesh/Bihar.”

7. Procedure to be followed by Tribunal :—(1) The Tribunal shall fix a date and place for the hearing of the matter which it is empowered to decide under the Act and shall inform the parties of such date and place accordingly.

(2) On the date so fixed or any other date to which the hearing may be adjourned, the Central Government and every person interested in the dispute before the Tribunal shall state in writing what in their respective opinions is a fair amount of compensation.

(3) The Tribunal shall afford reasonable opportunity to the parties to adduce such oral and documentary evidence as they desire to adduce and as may be relevant.

(4) The Tribunal shall record the substance of the statement of the parties and the witness, if any.

8. Appeals to Central Government :—(1) Every appeal to the Central Government shall be in the form of the memorandum signed by the appellant, and shall be addressed to the Secretary to the Government of India in the Ministry of Steel, Mines and Fuel (Departments of Mining and Fuel) and be presented to that officer personally or sent to him by registered post with acknowledgment due. The memorandum shall be accompanied by a certified copy of the order appealed against.

(2) The memorandum of appeal shall set forth, concisely and under distinct head, the grounds of objection to the order appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3) An appeal not filed within the time allowed under the Act or in the manner laid down in this rule shall be rejected by the Central Government, but if the appeal is defective in form, the Central Government before rejecting such appeal, shall call upon the party concerned to remove the defects within a particular time, and if he does so, the appeal shall be admitted.

Notes

It may be noted that the Coal Bearing Areas etc., Act 20 of 1957 is intended to help the progress of the coal mining industry. The Government is enabled to acquire unworked land containing or likely to contain coal deposits.

Section 2 (d) describes the 'person interested' as all persons claiming an interest in compensation on account of the acquisition of the land or of the acquisition of any rights in or over the land.

On the issue of such notification by the Government, all licences or leases, if any, in favour of any party over the land in question cease to operate. The competent authority can assess the compensation for damage, if any, done for the action done under Sec. 4 (1). If the amount is disputed, an appeal to the Central Government lies under Sec. 6, whose decision is final.

If after prospecting, the Government is of the opinion that it can acquire the land, it should notify under Sec. 7 of its intention to acquire. Such notification should be within 2 years from the date of the notification under Sec. 4(1). If no notice under Sec. 7 is given, the notice under Sec. 4(1) shall cease to have any effect after three years from its date of issue. Person interested may prefer his objections to the notification under Sec. 7 in writing to the competent authority who shall hear the party or his counsel and make further enquiries, if any. He shall make a report on the completion of the enquiry to the Central Government. When the latter is satisfied that the land should be acquired, a declaration of acquisition has to be published under Sec. 9 in the official Gazette and in the premises of the land in question. On such declaration, the land vests with the Central Government under sec. 10 or under its directions in a Government company (sec. 11). Under Sec. 12, the competent authority can take possession of the land. Section 14 outlines the method of determining compensation if there is no agreement reached between the party and the Government. A Tribunal is forthwith appointed by the Central Government. The Tribunal is to be manned by a person who is or has been or is qualified to be a Judge of the High Court. An expert may also be nominated by the Government to assist the Tribunal.

The Tribunal shall hear the persons interested and also the Government and determine a fair amount of compensation and specify it in the award together with the persons to whom it should be paid. Where more than one person are entitled, an apportionment of the compensation amount shall be made. The Tribunal may also award costs under Sec. 15. Till the payment of compensation, a direction can be made by the Tribunal as to the interest payable by the Government on the said amount to the claimant. Section 20 provides the appeal against the award under Sec. 14 to the High Court within whose jurisdiction the land is situate. An order of the competent authority is also subject to an appeal to the Central Government whose decision shall be final. Jurisdiction of Civil Courts save as provided is barred under Sec. 26. Of course, the writ remedy is available under Articles 32 and 226 of the Constitution of India.

In Burrakur Coal Company v. Union of India, (a)—The Supreme Court of India held that the provisions of the Coal Bearing Areas (Acquisition and Development) Act of 1957 and in particular those of Sec. 4 (4) and Sec. 5 (b) mitigate against the contention that the Act was intended to apply only to virgin lands, to the exclusion of land on which there are dormant mines.

(a) *Burrakur Coal Coy. v. Union of India*, A. I. R. 1961 S. C. 954, (A.I.R. 1953 S. C. 373 ref.)

The absence of a provision in Sec. 13 of the Act providing for compensation for mineral rights cannot by itself justify the conclusion that the Act was intended to apply to virgin land only. The further opinion was that a notification under Sec. 4 is not *ultra vires* to the Act because it applies not only to virgin lands but also to dormant collieries or unworked lands.

Sections 4, 5 and 6 do not invade the fundamental rights of the mine owner under Art. 19(1) (g) of the Constitution since under Sec. 5, a mining lease ceases to have effect for two years and possibly for three years. This was considered not an unreasonable restriction.

Article 31-A, Cl. (1) (e) of the Constitution bars the challenge to the validity of Secs. 4 and 5 of the Act on the ground that they infringe the provisions of Art. 31 (2) of the Constitution in as much as in Sec. 13 (4) which deals with the question of compensation there is no provision for the payment of compensation for the deprivation of the right of a mine owner or lessee to carry on his business for a period of two or three years. Suspension of the rights of a mine owner or a lessee of a mine is modification within the meaning of Art 31-A (1) (e), (A. I. R. 1953 S. C. 373).

It is manifest from the provisions of Secs. 13 and 14 that the Act specifies the principles on which and the manner in which the compensation should be determined and given. This is what is required of a law relating to the acquisition of property by Art. 31 (2) of the Constitution. That article lays down that such law cannot be called in question in any court on the ground that the compensation provided by that law is not adequate.

PART II

CHAPTER I-B

THE COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT) AMENDMENT AND VALIDATION ACT

No. 54 of 1971

(Published in India Gazette Extra-ordinary dated Dec. 13, 1971)

An Act further to amend the Coal Bearing Areas (Acquisition and Development) Act, 1957 and to validate certain acquisitions of land or rights in or over land under the said Act. [11th December, 1971].

Be it enacted by Parliament in the Twenty Second year of the Republic of India as follows :—

1. **Amendment of section 8 :—**This Act may be called the Coal Bearing Areas (Acquisition and Development) Amendment and Validation Act, 1971.

2. In sub-section (2) of section 8 of the Coal Bearing (Acquisition and Development) Act, 1957 (hereinafter referred to as the principal Act), for the words "submit the case for the decision of the Central Government together with the record of the proceedings held by him and a report containing his

recommendations on the objectors" the words, brackets and figures "either make a report in respect of the land which has been notified under sub-section (1) of section 7 or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the records of the proceedings held by him, for the decision of that Government" shall be substituted.

3. Amendment of section 9 :—In section 9 of the principal Act,—

(a) in sub-section (1),—

(i) after the words "made by it to that effect", the following shall be inserted namely :—

"and different declarations may be made from time to time in respect of different parcels of any land, or of rights in or over such land, covered by the same notification under sub-section (1) of section 7, irrespective of whether one report or different reports has or have been made (wherever required) under sub-section (2) of section 8" ;

(ii) For the words "Provided that, where the declaration", the following shall be substituted, namely :—

"Provided that no declaration in respect of any particular land, or rights in or over such land, covered by a notification under sub-section (1) of section 7, issued after the commencement of the Coal Bearing Areas (Acquisition and Development) Amendment and Validation Act, 1971, shall be made after the expiry of three years from the date of the said notification :

Provided further that where a declaration" ;

(b) in sub-section (2) for the words "The declaration" the words "Every declaration" shall be substituted.—

4. Amendment of section 14 :—In section 13 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely :—

"(5A) In determining the amount of compensation for any land acquired under section 9, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put shall not be taken into consideration."

5. Amendment of section 14 :—In section 14 of the principal Act, after sub-section (7), the following sub-section shall be inserted, namely :—

"(8) The Tribunal, in the proceedings before it, shall have all the powers which a civil court has while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely :—

(i) Summoning and enforcing the attendance of any person and examining him on oath ;

(ii) requiring the discovery and production of any document ;

(iii) reception of evidence on affidavits ;

(iv) requisitioning any public record from any court or office ;

(v) issuing commissions for examination of witnesses."

6. Amendment of section 17 :—In section 17 of the principal Act in sub-section (2), for the second proviso, the following provisos shall be substituted, namely :—

"Provided further that every person who claims to be an interested person (whether such person has been admitted to be interested or not)

including the person referred to in the preceeding proviso shall be entitled to prefer a claim for compensation before the Tribunal :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to prefer any such 'claim' before the Tribunal."

7. Insertion of new section 18A :—After section 18 of the principal Act, the following section shall be inserted, namely :—

"**18A.** Notwithstanding anything contained in this Act, where any land or any rights in or over land belonging to a State Government (other than the rights under a mining lease granted or deemed to have been granted by the State Government to any person) vest in the Central Government under section 10 or in a Government Company under section 11, the Central Government or the Company, as the case may be, may pay to the State Government such sum of money as would have been payable as royalty by a lessee had such land or rights been under a mining lease granted by the State Government."

8. (1) Validation of certain acquisitions :—Notwithstanding any judgment, decree or order of any court to the contrary,—

(a) no acquisition of land or of rights in or over land made or purporting to have been made under the principal Act before the commencement of this Act, and no action taken or thing done (including any order made, agreement entered into or notification published) in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground—

(i) that one or more competent authorities have performed the functions of the competent authority under the principal Act in respect of the land covered by the same notification under sub-section (1) of section 7 of the principal Act ;

(ii) that one or more reports have been made under sub-section (2) of section 8 of the principal Act, whether in respect of the entire land covered by the same notification under sub-section (1) of section 7 of the principal Act or rights in or over such land; or in respect of different parcels of such land or of rights in or over such land ;

(iii) that one or more declarations have been made under section 9 of the principal Act in respect of different parcels of the land covered by the same notification under sub-section (1) of section 7 of the principal Act or in respect of rights in or over such land,

(b) any acquisition in pursuance of any notification issued under sub-section (1) of section 7 of the principal Act before the commencement of this Act may be made after such commencement and no such acquisition and no action taken or thing done (including any order made, agreement entered into or notification published) whether before or after such commencement, in connection with such acquisition shall be deemed to be invalid merely on the grounds referred to in clause (a) or any of them.

(2) Notwithstanding anything contained in Clause (b) of sub-section (1), no declaration under section 9 of the principal Act in respect of any land, or rights in or over such land, which has been notified before the commencement of this Act, under sub-section (1) of section 7 of the principal Act, shall be made after the expiry of two years from the commencement of this Act.

(3) Where acquisition of any particular land (not being acquisition of rights in or over such land) covered by a notification under sub-section (1) of section 7 of the principal Act, issued before the commencement of this Act, is or has been made in pursuance of any declaration under section 9 of the principal Act, whether made before or after such commencement, and such declaration is or has been made after the expiry of three years from the date of issue of such notification, there shall be paid simple interest, calculated at the rate of six per centum per annum on the market value of such land, as determined under sub-section (5) of section 13 of the principal Act, from the date of expiry of the said period of three years to the date of payment of compensation payable for the acquisition of such land ;

Provided that no such interest shall be payable for any period during which the proceedings for the acquisition of any land were held up on account of stay or injunction by order of a court :

Provided further that nothing in this sub-section shall apply to the acquisition of any land where the amount of compensation has been paid to the persons interested before the commencement of this Act.

PART II

CHAPTER II

THE LAND ACQUISITION MINES ACT XVIII OF 1885

PASSED BY THE GOVERNOR-GENERAL IN COUNCIL

*(Received the assent of the Governor-General on the
16th October, 1885)*

An Act to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.†

Whereas it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870† ; It is hereby enacted as follows :—

Short title, commencement and local extent

1. (1) This Act may be called the Land Acquisition (Mines) Act, 1885, and

† See now Land Acquisition Act I of 1894.

*(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B states.

(3) It applies in the first instance to the territories which, immediately before the 1st November, 1956, were comprised in the State of Madras, Andhra, West Bengal, Bihar, Assam and Orissa ; but any State Government may, from time to time, by notification in the Official Gazette, bring this Act into force in the whole or any specified part of the territories to which this Act extends, under its administration.

Notes

Object and reasons for the enactment :—The object and reasons for this enactment are stated thus in the statement of Object and Reasons to the Bill to this Act dated 24-2-85 :—"The object of this Bill is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act (1870)."

2. Act XXII of 1863, which was replaced by the Land Acquisition Act, 1870, contained specific provisions (sections 51 and 52) for cases in which mines and minerals lay under land taken up under that Act. These provisions were not however, re-enacted in the Act of 1870, which, as the Government is advised, contemplates the acquisition of the underlying minerals as well as the surface of the land.

3. Hitherto this state of the law has caused no inconvenience. Now, however, owing to its being proposed to extend railway across districts where there is a certain amount of coal to be found, notice has been drawn to the inconvenience of the existing law which practically compels the Government either to purchase all the mines and minerals under the land over which it is proposed to construct a line or to abandon the under-taking altogether.

4. Under these circumstances, the present Bill has been prepared. It does not, however, simply re-enact the provisions which Act XXII of 1863 formerly contained, inasmuch as they do not appear to be adapted to the circumstances of the case. It follows, rather, the rules contained in the English Railway Clauses Consolidation Act, 1845 (8 & 9 Vic. C. 20, S. 77 *et seq.*), which extends to the acquisition of land for all purposes and not merely for the construction of railways.

5. It provides, first (sec. 2) that when a declaration is made by the Local Government under sec. 6 of the L. A. Act the Local Government may, if it thinks fit, insert in the declaration a statement that any mines and minerals lying under the land to be acquired are not needed, and that if any such statement is inserted in the declaration, the mines and minerals lying under the land shall not, when the Collector takes possession under section 16 or section 17 of the Act, vest in the Government.

6. It then (section 3) declares that if the owner, lessee or occupier of any mines or minerals lying under the land so acquired is desirous of

* Substituted by the Adaptation of Laws (No. 2) Order, 1956,

working the same, he shall give the Local Government notice in writing of his intention so to do 30 days before the commencement of working.

7. Next (section 4) the Bill empowers the Local Government to cause the mines and minerals to be inspected by a person appointed for the purpose.

8. If it appears (section 5) to the Local Government that the working of the mines and minerals is likely to cause damage to the surface of the land or any works thereon, the Local Government may at any time before the expiration of 30 days from the receipt of the notice, offer either—

- (a) to pay compensation for the mines or minerals to the owner, lessee or occupier ;
- (b) to pay compensation to the owner, lessee or occupier of the mines or minerals in consideration of his working or getting them in such manner and subject to such restrictions, as the Local Government may in its order, specify.

If the offer mentioned in case (a) is made, then the owner, lessee or occupier is prohibited from working the mines or minerals, whilst if the offer mentioned in case (b) is made, then he may not work or get the mines or minerals, save in the manner and subject to the restrictions specified by the Local Government.

9. The bill next provides (section 6) for the manner in which the amount of compensation to be paid under section 5 is to be determined.

10. Should, however, the Local Government not offer to pay any compensation, section 7 permits the owner, lessee or occupier of the mines and minerals to work the mines in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area in which the same are situate. Should any damages or obstruction be caused by the improper working of the mines, the section provides for the repairing of the damage or the removal of the obstruction by or at the cost of the owner, lessee or occupier.

11. Sections 8 and 9 provide for the inspection of mines for the purpose of ascertaining whether they are being worked or have been worked so as to damage the land which has been acquired, and section 10 declares that if any mines, have been improperly worked, the Local Government may require the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary for making safe the land acquired and preventing injury thereto.

12. Lastly, section 11 makes the provisions of sections 3 to 10 applicable to cases where the land acquired has been transferred to a company, and section 12 defines what the term Company as used in the Bill means.

In dealing with the effect of the Railway Clauses Act 1845 Lord Cranworth observed : "it was obviously the intention of the legislature in making these provisions to create a new code as to the relation between mine owners and railway Companies where lands were compulsorily taken for the purpose of making a railway. The object of the statute evidently was to get rid of all the ordinary laws on the subject and to compel the owner to sell the surface, and if any mines were so near the surface that they must be taken

for the purpose of the railway, to compel him to sell them, but not to compel him to sell anything more". (a).

Land Acquisition Act, 1870 :—By the passing of the L. A. Act I of 1894 the L. A. Act X of 1870 has been repealed and all the references in this (L. A. Mines) Act to the L. A. Act of 1870 should be read to refer to the Land Acquisition Act I of 1894 or to the corresponding portion thereof (*vide* sec. 2, cl. (3) of the L. A. Act I of 1894).

Extent of the Act :—The Select Committee in para 2 of their Report dated 23-9-1885 observed : "some of the Local Governments have objected to the Bill being applied to the provinces under their administration on the ground that, having regard to the manner in which the right to minerals is regulated in those provinces, it is unnecessary there, and that, if unnecessary it would only prove an encumbrance and complication in the acquisition of lands. To meet these objections we have made the measure applicable by its own vigour only to the territories under the administration of the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but have empowered the remaining Local Governments to extend it to the whole or any part of the territories administered by them if they think fit."

This act has been declared to be in force in Sonthal Pargannas by the Sonthal Pargannas Settlement Regulation (III of 1872), sec. 3 as amended by Sonthal Pargannas Justice and Laws Regulation (III of 1899), sec. 3, in Angul and the Khandmals, see the Schedule to the Angul District Regulation (I of 1894, S. 3). In 1885 it was in force in the territories under the administration of the Lieutenant-Governor of Bengal, *i. e.*, in Bengal, Bihar and Orissa, which are now under the separate administration of the Governor of Bengal and the Governors of Bihar and Orissa. It is in force in the Presidency of Madras, but has not been extended to the Presidency of Bombay. *Vide L. A. Manual, Bombay Government Gazette, 1918, p. 105.*

Before 1912 Bengal, Bihar and Orissa were under the administration of the Lieutenant Governor of Bengal. By the Bengal, Bihar, Orissa and Assam Laws Act (VII of 1912), Bihar and Orissa were separated from Bengal and were placed under the administration of a separate Lieutenant Governor and constituted a separate province of Bihar and Orissa and a Chief Commissioner was appointed for the province of Assam and under s. 7, sch. E for the words "the Lieutenant Governor of Bengal" the words "the Governor in Council of Fort William in Bengal" were substituted. Under the Constitution of India, 1950 the territories under the administration of Lieutenant-Governor of Bengal in 1885, comprise the State of West Bengal, the State of Bihar, the State of Orissa and the State of Assam under a Governor appointed for each of the States.

It therefore follows that the L. A. (Mines) Act, 1885 is in force in the States of Madras, West Bengal, Bihar, Orissa and Assam. See also the Repealing and Amending Act, X of 1914, Sch. I.

Sub-section (3) now clearly lays down the extent of the Act.

(a) *G. W. Ry. Co. v. Bennett*, 2 H. L. 27.

Saving for mineral rights of the Government

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

Notes

Object of the section :—The Select Committee in their Report dated 23-9-1885 observed : “An apprehension has been expressed in some of the opinions received that the Bill might by implication affect the rights which the Crown has to all minerals throughout a very large portion of the country. Such an apprehension is, we believe, unfounded, but by way of greater precaution and to prevent misapprehension we have inserted a section 2 saving the right of the Crown.”

Mine—what it means and includes :—The word “mine” is used in various senses. It denotes an under-ground excavation made for the purpose of getting minerals and also a stratum or vein, aggregations of strata or veins of minerals whether opened or unopened and whether within the property of one surface-owner or of several. “The word includes in addition to excavations, machinery etc., works which are incidental to or connected with mining operations, (b). It is also used to denote the cubical space occupied or formerly occupied by mineral—Halsbury, Vol. XX, p. 501.

The word “lands” in the Lands Clauses Act, 1845, includes mines. The word “mine” has been defined in section 3 (4) of the Indian Mines Act VIII of 1901, as to include every shaft in the course of being sunk and every level and inclined plane in the course of being driven for commencing or opening any mine or for searching or for probing minerals, and all the shafts, levels, planes, works, machinery, tramways and sidings both below ground and above ground in and adjacent to and belonging to the mines ; but it does not include any pit, quarry or other excavation the depth of no part of which measured from the level of the adjacent ground exceeds twenty feet and not part of which extends beneath the superjacent ground.

Lord Watson in discussing the meaning of the words “mines of coal, iron, slate and other minerals” observed : “The word ‘quarry’ is no doubt inapplicable to underground excavations but the word ‘mining’ may without impropriety be used to denote some quarries. Dr. Johnson defines a quarry to be a stone mine. I am accordingly of opinion that in those enactments, the word ‘mines’ must be taken to signify all excavations by which the excepted minerals may be legitimately worked and got. If coal, iron, stone or slate crops out at any part of the surface taken for water works or railway purposes the undertakers or the company acquire, in my opinion no right save the right to use that part of the surface ; they acquire no right to the mineral themselves except in so far as these are dug out or excavated, in order to construct their works”, (c).

(b) *Keshardas Goenka v. Emperor*, 38 C. W. N. 418 : 59 C. L. J. 122 : 148 I. C. 739 : 1934 A. I. R. (C) 387.

(c) *Lord Provost and Magistrate of Glasgow v. Farie*, (1888) 13 A. C. 657.

Lord Herschell in dealing with the same question said : "What then is the interpretation to be put upon the word 'mines' ? I think the primary idea suggested to the popular mind by the use of the word is an under-ground working in which minerals are being or have been wrought. It is certainly often used in contrast to 'quarry' as indicating an under-ground working as opposed to one opened to the surface. But to limit it in the enactment we are constructing to an underground cavity in which minerals are being or have been wrought, would be obviously inadmissible. The enactment was clearly intended to extend to minerals lying under-ground which had hitherto been undisturbed. Is the true interpretation to be found by limiting the provision to those minerals which are commonly worked by means of underground working ? The word 'mines' is, I think, in a secondary sense, very frequently applied to a place where minerals commonly worked underground are being wrought, though in the particular case the working is from the surface."

The question came again before the House of lords in *Midland Ry. Co. v. Robinson*, (d). In that case Lord Herschell held that the intention of the Legislature was to use the word "mines" in the widest sense that can probably be given to it ; and Lord Watson adhered to his opinion in *Lord Provost and Magistrate of Glasgow v. Farie*, *supra*, that every substance, being mineral within the meaning of those words was reserved to the owner irrespective of the method by which it may be wrought, and again defined the word "mines" as "all excavations by which the excepted minerals may be legitimately worked and got." The term 'mine' is not a definite term but is susceptible of limitation or expansion according to the intention in which it is used and its primary signification can always be enlarged if that is the intention of the contracting parties or the legislature, (e).

What are minerals :—In the most general sense of term, minerals are those parts of the earth which are capable of being got from underneath the surface for the purpose of profit. The term therefore, includes coal, metal ores of all kinds, stone, slate, and coprolites, but not the common clay, sand or gravel found in the upper soil. A mine is a work for the excavation of minerals by means of pits, shafts, levels, funnels, etc., as opposed to a quarry, where the whole excavation is open. While unsevered minerals form part of the land, and as such are real estate. When severed, they become personal chattels. Royal mines are mines of gold and silver, and belong to the Crown, in whosoever land they may be found. In other cases mines and minerals belong *prima facie* to the owner of the surface of the land, though they may be and frequently are, held by different persons. It follows from the nature of copyhold tenure that the minerals under copyhold land belong to the lord though he cannot work them without the tenants' consent, except by a local custom. In many places customs or prescriptions exist by virtue of which persons are entitled to work mines in land, the freehold of which is vested in another person.

(d) *Midland Ry. Co. v. Robinson*, (1890) 15 A. C. 19.

(e) *Keshardas Goenka v. Emperor*, 38 C. W. N. 418 : 59 C. L. J. 122 : 148 I. C. 739 : 1934 A. I. R. (Cal.) 387.

By modern statutes, numerous obligations have imposed on mine-owners for the protection of the public and of persons employed in mines. The principal Acts now in force in England are as regards coal mines, and, as regards mines generally, the Metalliferous Mines Regulation Act, 1872 and 1875, the Quarries Act, 1894, the Mines (Prohibition of Child Labour Underground) Act, 1900, and the Mines Accidents (Rescue and Aid) Act 1910. The right to work minerals under Railways, canals, waterworks and highways is restricted by the Acts relating to these matters. *Byrne's Dictionary of English Law*, P. 580.

Declaration that mines are not needed

3. When the appropriate Government makes a declaration under section 6† of the Land Acquisition Act, 1870, that land is needed for public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or used in the construction of the work for the purpose of which the land is being acquired, are not needed.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870,† and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11‡ of the said Land Acquisition Act in respect of the mines, and may—

- (a) when he makes an award under section 14* of that Act, insert such a statement in his award ;
- (b) when he makes a reference to the Court under section 15* of that Act, insert such a statement in his reference ; or
- (c) when he takes possession of the land under section 17* of that Act, publish such a statement in such manner as the appropriate Government may, from time to time prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate or other mineral under the land or portion of the land specified in the statement, except as aforesaid, shall vest in the Government when the land so vests under the said Act.

Notes

Amendment :—By section 2 of the Devolution Act XXXVIII of 1920; the Land Acquisition (Mines) Act, 1885, has been amended in the following

† See now S. 6 of the Land Acquisition Act, 1894 (1 of 1894).

‡ See now S. 11 of Act I of 1894.

* See now S. 19 of Act I of 1894.

* See now sections 19 and 17 respectively of Act I of 1894.

manner, that is to say : In clause (c) of section 3 (2) for the word "Governor-General in Council" the words "Local Government" have been substituted.

This was section 2 of the Bill. The Select Committee in para. 4 of their Report dated 23-9-1885 observed thus :

"Section 2 of the Bill as introduced required the Government to determine, before it issued declaration under section 7 of the Land Acquisition Act, whether the land should be acquired simply under that Act, that is to say, including the minerals or whether the special provisions of the Bill should be put in force with a view to exclude the mineral from the acquisition. It has been represented that it is not for the interest of any of those concerned that an irrevocable determination should necessarily become so important a point at a stage of the proceedings when the circumstances of the case would in all probability be imperfectly known. The Government, it will be observed on reference to the Land Acquisition Act, has a discretion to withdraw from a proposed acquisition of land up to a considerable later stage, and it seems but reasonable that it should have a discretion to exclude the minerals from the acquisition at any time up to the same stage if it turns out that their acquisition is not essential to the undertaking and that either the owners are unwilling to part with them or the Government or the Local authority or Company concerned is unwilling to pay their full value. We have accordingly (in section 3) empowered the Collector, who in such a matter would of course, act under the control of the Government to exclude the minerals from the acquisition at any time up to the stage of the proceedings at which the land vests, and it is no longer in the discretion of the Government to recede from the transactions."

Declaration in case of mines :—In England if it is intended to purchase or take minerals for the purpose of the undertaking, this intention should be specifically stated in the notice to treat. In ordinary cases, the sub-sec. is not required in order to carry out a parliamentary undertaking, and in the case of railway and waterworks companies, minerals are specially excepted from an ordinary purchase unless they are included in express terms. There is, without doubt, powers to include minerals in a notice to treat, if they are required by the promoters, (f).

The section provides that declaration should contain a statement that only surface land is needed and that mines are not needed. In the absence of any such statement in the declaration what is to be presumed is that the land including the mines underneath be acquired. If, however, from the circumstances of the case, it appears to the Collector that the mines are not needed, or "are not essential to the undertaking and that either the owner is unwilling to part with them or Government or the Local authority or Company concerned is unwilling to pay their full value," the section empowers the Collector to exclude the minerals under the provisions of the Act, *i. e.*, under conditions mentioned in sections 5, 6 & 7 from the acquisition *at any time up to the stage of the proceeding at which the land vests i. e.*, before taking possession under section 16 of the L. A. Act I of 1894,

(f) *Errington v. Metropolitan District Rail Co.*, (1883) 19 Ch. D. 559.

and by section 3 (2) (a), (b), (c) the Collector is empowered to insert the statement that the mines of coal, iron-stone, slate, or other minerals lying under the land, except only such parts of the mines or minerals as it may be necessary to dig or carry-away or use in the construction of the work for the purpose of which the land is being acquired, are not needed either (1) in the award or (2) in the reference to the Court when making reference to Court under section 18 of the L. A. Act and (3) to publish such statement, when in urgent cases he takes possession of the land under section 17, in such manner as the Local Government may, from time to time prescribe.

Consequent upon a declaration under S. 6, L. A. Act 1894, that land was needed for public purpose, *viz.*, quarries in connection with certain constructions with an insertion in it of statement under S. 3 (1) under L. A. (Mines) Act 1885 excluding certain mines and making necessary reservation, the owner of the land claimed compensation for minerals or an express order excluding them from acquisition and the Judge to whom reference was made under S. 18 of the Act, held, that the minerals had not been acquired. The owner also claimed compensation for a special stone which had high commercial value lying under the land, part of which was leased to a stone company and some part was in the occupation of tenants. The Superintending Engineer made a fair estimate of the quantity of the stone available which it would have been profitable to remove to his railway siding, which was made the measure of compensation allowed in the award under S. 11 for the total value of the entire quantity of the available stone. The amount awarded was accepted by the owner. On the completion of the proposed construction the owner gave notice to Government under S. 4 of the Act of 1885 of his intention to work the minerals of the land covered by the declaration. The right of the owner was denied and consequently the owner used for the possession of the sub-soil including stones and other minerals lying in, upon or under the land. The defence was that the compensation already granted included all the value of all minerals and stones lying in, upon or under the surface of the land acquired. It was not denied that the stones were minerals. It was held, on the construction of the declaration and the subsequent conduct of parties that the stones other than those required for the construction of the proposed work vested in the owner and he was not estopped from claiming to work them by reason of the course adopted in proceedings under the L. A. Act, (g).

The effect of statement by the Collector :—The effect of the statement of any such intention, *viz.*—"that the mines of coal, iron-stone, slate, or other minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed" either in the declaration by the Government or in the award or reference on the publication of such statement by the Collector in such manner as the Local Government prescribed in that behalf before taking possession under section 17, is that the mines of coal, iron-stone, slate or other minerals under the land or portions of the land specified in the statement do not vest in the Government at all.

Jurisdiction of the Collector under the L. A. (Mines) Act XVIII of 1885 :—The Collector under the L. A. Act I of 1894 has limited jurisdiction. He is bound by the official declaration in the local Official Gazette. The Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If the Local Government committed a mistake the Collector cannot cure the mistake, (h). Whereas under the L. A. (Mines) Act, XVIII of 1885, the Collectors are empowered to exclude the acquisition of the mines or minerals under certain circumstances though there may not be a statement to that effect in the declaration.

The effect of acquisition with exceptions :—Land was acquired by a Railway Company for the construction of branch line. The notification in connection with the acquisition contained an exception clause, excluding “mines of coal, iron-stone, slate and other minerals” from the scope of such acquisition, in terms of the sec. 3 of the L. A. (Mines) Act. The Railway Company, however, removed moorum and laterite stone without the consent of the proprietors. On a suit being brought by the latter for recovery of compensation for removal of such stones on the ground that they were “minerals and therefore, covered by exception : it was held that in order to ascertain whether the substances are covered by the exception the double tests, viz., common Rock and Vernacular, as formulated in Budhill’s case should be applied and applying this test it held “that moorum and laterite are minerals according to the vernacular test but being the common rock of the district do not fall within the exception and the plaintiff is not entitled to succeed.” (i).

Meaning of the words “lying under” in sec. 3 (1) :—The natural meaning of the words “lying under” or “underlying” between which there is no difference is “lying vertically under.” The words “minerals lying under the land” in the L. A. (Mines) Act, 1885 mean minerals lying vertically under the land. Where by an agreement which referred specifically to the L. A. (Mines) Act, the owner of mining rights in certain land acquired or in land under certain railway lines, agreed not to claim compensation for any restricted working of the mines : it was held that the waiver covered only minerals lying vertically under the railway tracks but not also coal lying beneath the adjacent land the lateral support of which was necessary for the safety of the tracks, (j).

Notice to be given before working mines lying under land.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the appropriate Government notice in

(h) *Harish Chandra Neogi v. Secretary of State*, 11 C. W. N. 875.

(i) *The Midnapore Zamindari Co. Ltd. v. The Bengal Nagpur Ry. Co. Ltd.*, 45 C. W. N. 553 : 1 I. L. R. (1941) 1 Cal. 189 : 196 I. C. 305 : (1941) A. I. R. Cal. 365.

(j) *The Secretary of State v. Ambalal Khora*, 49 C. W. N. 295 (P. C.) : 72 I. A. 11 : 26 P. L. T. 113 : 1945 M. W. N. 252 : 47 Bom. L. R. 621 : 1 I. L. R. (1945) Kar. (P. C.) 127 : (1945) 1 M. L. J. 249 : 219 I. C. 67 : A. I. R. 1945 (P. C.) 56.

writing of his intention so to do sixty days before the commencement of working.

Notes

Persons entitled to work mines :—At first there was a great controversy as to whether a holder of a permanent tenure or a *digwari* tenure in a putni possesses all the underground rights including mineral rights and the Courts in India had all along held that the holder of a permanent tenure or a *digwari* tenure and putnidar possesses all the underground rights including mining rights *unless there is an express reservation to the contrary*, and it was also held that the holder of permanent tenure such as *digwari* tenure or putni possesses all kinds of rights attaching in the lands from the centre of the earth to the sky, *unless there is an express reservation restraining the enjoyment of a specified right, (k)*. It has also been held that a contract to sell or grant lease of land will also generally include the entire solum from the surface down to the centre of the earth and will therefore include mines, quarries or minerals. An owner in fee-simple possesses in all freehold lands an unrestricted right to work the mines in his estate and his conveyance in the absence of any indication to the contrary, grants all mines and minerals therein, *(l)*.

The view of Privy Council :—Their Lordships of the Judicial Committee, on the other hand, have held in *Kumar Hari Narayan Singh v. Sriram Chakravarti, (m)*, (in appeal from *Sriram Chakravarti v. Hari Narain Singh*, 3 C. L. J. 59) that when the title of the Zemindar to a village as part of his Zemindary before the creation of the permanent tenancy, is established, he must be presumed to be the owner of the underground rights thereto appertaining *in the absence of the evidence that he ever parted with them* and Their Lordships held that the mineral rights remained in the zemindar *in the absence of proof* that the said rights vested in the *digwar* before the time of permanent settlement if the said mouzas were then held on *Digawari* tenure, or *that the zemindars ever parted the mineral rights, (n)*, have held "Where the proprietor of a zamindari executed a permanent heritable and transferable mokurari pottāh at a fixed rent of a small portion of a village within its ambit 'with all rights (*mai hak hakuk*) appertaining to my zemindari'

(k) *Sriram Chakravarti v. Hari Narayan Singh*, 3 C. L. J. 59 ; *Brojo Nath Bose v. Raja Sri Sri Doorga Prashad Singh*, 34 C. 753 : 12 C. W. N. 195 : 5 C. L. J. 583 ; *Rameswar Malia v. Ram Nath Bhattacharjee*, 3 C. L. J. 103 ; *Nawab Sri Ali Quader Hossain v. Rai Jogendra Nath Roy*, 16 C. L. J. 7.

(l) *Meghlal Pandey v. Raj Kumar Thacoar*, 34 C. 350 : 11 C. W. N. 527 : 5 C. L. J. 208 ; *Raja Bhupendra Narayan v. Rajeswar Prosad*, 32 C. W. N. 16 reversed by the Privy Council in *Bhupendra Narayan Sinha v. Rajeswar Prosad Bhakat*, 58 I. A. 228.

(m) *Kumar Hari Narain Singh v. Sriram Chakravarti*, 37 C. 723 : 14 C. W. N. 741 : 11 C. L. J. 653.

(n) *Doorga Prashad Singh v. Brojo Nath Bose*, 39 C. 659 : 15 C. L. J. 461 : 16 C. W. N. 482 (P. C.) (in appeal from *Brojo Nath Bose v. Raja Sri Doorga Prashad Singh*, 5 C. L. J. 583).

and giving the makuridar power to cut down and fell trees, the mineral rights remained in the zemindar." (o).

The grant by a zemindar of a tenure of lands in his zemindari although the tenure may be permanent heritable and transferable, whether at a fixed rent or rent-free, as for instance, revenue-free Brahmottar, will not include the rights to the minerals in the land unless it clearly appears by the terms of the grant that such a right was intended to be conveyed, (p). An Inam grant may be no more than an assignment of revenue and even when it is to include grant of land what interest in the land passes must depend on the language of the instrument and the circumstances of the case, (q). Without apt words such a grant does not pass the rights to minerals. Lord Dunedin, in delivering the judgement of the Board, observed : "there have been a series of cases before this Board in which their Lordships have held, in the cases of leases of mokurari and other tenures, that in order to pass minerals to the lessees *express words must be needed*, (r).

The present law :—After the expression of the above views by the Privy Council there appears to be a change in the view of High Courts in India, for instance, in *F. F. Christian v. Tekaitni Narbada*, (s), it was held that "where a deed was one for maintenance for the life of the grantee and *did not contain any express provision authorising the grantee to open new mines and to appropriate the minerals therefrom the grantee had no right to grant a mining lease for the purpose of opening and working new mines.*" A putni kabuliati described the grant as a "Mofussil Putni-Taluk lease according to the provisions of Reg. VII of 1879," and recited the transfer of "the entire zemindari, including all interests therein" with, however, a stipulation against the cutting of trees and excavation of tanks save with the permission of the zemindar. Their Lordships of the Judicial Committee in construing the lease held that, by virtue of the definition of the nature of a Putni tenure in Reg. VIII of 1819, cl. (iii), and of the nature of a talook in Reg. VIII of 1793, cls. (v) & (vii), the grant was clearly a lease as the terms did not show a transfer of the property in the soil ; that the expression "including all interests therein" did not increase the corpus of the subject of the lease so as to include the subsoil.

In the absence of express words, mukarrari leases and other grants do not carry with them the rights to the minerals and a putni lease stands on the

(o) *Raj Kumar Thacoor, v. Megh Lal Pandey*, 45 C. 87 : 22 C. W. N. 201 : 26 C. L. J. 584 (in appeal from *Megh Lal Pandey v. Raj Kumar Thacoor*, 34 C. 358 : 11 C. W. N. 587 : 5 C. L. J. 208).

(p) *Raghunath Rai Marwari v. Raja Doorga Proshad Singh*, 47 C. 75 : 23 C. W. N. 94 : 30 C. L. J. 160.

(q) *Secretary of State for India in Council v. Srinivasa Chariar*, 41 I. A. 56 : 44 M. 421 : 25 C. W. N. 818 : 33 C. L. J. 280.

(r) *Satya Narain Chakravarti v. Ram Lal Kaviraj*, 29 C. W. N. 725. *Sashi Bhusan Misra v. Raja Jyoti Prasad Singh Deo*, 44 C. 585 : 21 C. W. N. 377 : 25 C. L. J. 265 (P. C.).

(s) *F. F. Christian v. Tekaitni Narbada*, 20 C. L. J. 527 : 12 C. W. N. 796 : 27 I. C. 471. *Nawagarh Coal Co. Ltd. v. Behari Lal Trigunait*, 20 C. W. N. 113 (Pat.) and *Satya Niranjan Chakravarty v. Sushilabala Dassi*, 4 Pat. 799 : (1926) A. I. R. (Pat.) 103. *Raja Bejoy Singh Dudhuria v. Surendra Narayan Singh*, 55 I. A. 320 : 33 C. W. N. 7 (P. C.).

same footing as a mukrarrari lease so far as the rights to the minerals are concerned, (i). Putni tenures generally are on the same footing as to subsoil rights as other permanent, heritable and transferable tenures created by a zemindar, that is to say, the subsoil rights pass to the patnidar only when granted in express terms ; general vernacular words signifying "with all rights" are insufficient for that purpose. *Bhupendra Narayan Sinha v. Rajeswar Prasad Bhakat*, (i¹). The subsoil rights in land forming part of a permanently settled zemindari are to be presumed, at all events when they are not claimed by the Crown to belong to the zamindar ; a claimant thereto proving merely possession of the surface rights since before the permanent settlement does not discharge the onus upon him, because he is presumed to hold under a grant from the zamindar and unless the grant expressly included the sub-soil rights it would not convey them, (u).

Right to mines by adverse possession :—A zemindar sued for a declaration of his sub-soil rights in land held from him under patni grants and for damage ; the patni grants did not convey the subsoil rights. Beneath a stratum of stones and gravel the land contained a fairly well-defined stratum of valuable ochre. For over twelve years before suit the defendant darpatnidars had been removing, for road making, the stones and gravel by pits sunk all over the land ; some ochreous earth was removed with the stones and gravel, but merely as a waste product. The ochre had first been worked within twelve years under lease granted by the darpatnidars, the right to the stones and gravel being thereby reserved. It was held that although the suit was barred under the Indian Limitation Act, 1908, Sch. I, Art. 144, (12 years) by adverse possession as to the stones and gravel, it was not so barred as to the ochre, that being a separate stratum of which there could be separate ownership and possession. Having regard to the zemindar's constructive possession of the sub-soil rights, the Article applicable was Article 144 (12 years from the date when the possession of the defendant becomes adverse to the plaintiff) and not Art. 142 (12 years from the date of the dispossession or discontinuance) ; the zemindar was to be presumed to continue, in possession until adverse possession for twelve years was established, (v).

Notice to work mines :—Section 4 is taken from Sn. 78 of the Railway Clauses Consolidation Act, 1845. It has been seen that by section 3 the Collector is empowered under certain circumstances to exclude the minerals from acquisition and acquire only surface land in which case the mines do not vest in the Government and there is nothing to prevent the "owners, occupiers and lessees" from working the mines. But it is thought necessary to introduce safeguards for the protection of life and property by preventing damage to the surface and not to allow the "owners occupiers and lessees" to work the mines underneath the surface of the lands acquired without taking due precaution for its safety. Hence it is necessary that the Govern-

(i) *Mangobinda Sahu v. Satya Niranjan Chakravarti*, 9 P. L. T. 593 : 1928 A. I. R. (Pat.) 482.

(i¹) *Bhupendra Narayan Sinha v. Rajeswar Prasad Bhakat*, 58 I. A. 228.

(u) *Gobinda Narayan Singh v. Sham Lal Singh*, 58 I. A. 125.

(v) *Bhupendra Narayan Sinha v. Rajeswar Prasad Bhakat*, 58 I. A. 228.

ment would be informed of the intention of the "owners, occupiers, lessees" to work the mines at least 2 months previous to the commencement of the working of the mines, so that the Government may in the meantime be able to ascertain by inspection by experts, (called Inspector of Mines) whether the mine underneath the surface-land acquired could at all be worked without damage to the surface and the works thereon and if worked, what necessary precautions are to be taken to work the same so as to prevent loss of life and property. If it appears to the Government that the working of such mines or minerals is likely to cause damage to the the surface and works thereon and if the Government be willing to make compensation for such mines or any part thereof to such "owner, lessee or occupier" thereof, then he shall not work or get the same and if the Government and such owner, lessee or occupier do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation, (w).

Sixty days' notice :—Section 78 of the Railway Clauses Consolidation Act, 1845, prescribes only 30 days for the notice. The Select Committee in para 5 of their report dated 23-9-85 says : "It has been urged that the notice of thirty days to be given to the Government under section 3 of the Bill as introduced, by a mine-owner disiring to work his mines, is too short having regard to the delay in communication in this country. We think the objection is reasonable and we have accordingly (in section 4 of the amended Bill) extended the period to sixty days."

Power to prevent or restrict working

5. (1) At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the appropriate Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose ; and

(2) If it appears to the appropriate Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the appropriate Government may publish a declaration of its williness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same ; or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the appropriate Government may in its declaration specify.

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (b) is made, then those mines or minerals or that part thereof, shall not thereafter be worked or gotten by

any person save in the manner and subject to the restriction specified by the appropriate Government.

(5) Every declaration made under this section shall be published in such manner as the appropriate Government may direct.

Notes

Amendment :—By section 2 of the Devolution Act XXXVIII of 1920, in sub-section (2) of the section 5, the words “in such manner as the Governor-General in Council may from time to time direct” have been omitted and to the same section the following sub-section has been added, namely, “(5) Every declaration made under this section shall be published in such manner as the Local Government may direct.” The words “appropriate Government” have been substituted for “Local Government” by Adaptation of Laws Order, 1950.

Object and reasons for the section :—If it appears to the Local Government that the working of the mines or minerals is likely to cause damage to the surface of the land or any work thereon the Local Government may at any time offer either (a) to pay compensation for the mines or minerals to the owner, lessee or occupier : (b) to pay compensation to the owner, lessee or occupier of the mines or minerals in consideration of his working or getting them in such manner and subject to such restrictions as the Local Government may in its offer specify. If the offer mentioned in case (a) is made then the owner, lessee or occupier is prohibited from working the mines or minerals, whilst if the offer mentioned in cases (b) is made then he may not work or get the mines or minerals save in the manner and subject to the restrictions specified by the Local Government—*Statement of Objects and Reasons*.

Lord Chelmsford observed that “if the company desires to postpone the purchase of the mines until it is known that they are to be worked, the company is enabled to do so with perfect safety from the protection offered by the 28th section which compels the mine owner whose mines lie under the railway or within a certain distance of it, who is desirous of working the same, to give thirty days’ notice of his intention and the company may then cause the mines to be inspected, and if it appears that the working of the mines is likely to damage the railway and if the company be willing to make compensation for the mines to the owner he shall not work or get the same. This section appears to me to leave the mine-owner free to work his mines exactly as he would if the surface belonged to him unless the railway company chooses to prevent him by expressing willingness to make compensation.” (x),

The object of L. A. (Mines) Act is that all persons interested shall be compensated when the person entitled to work the mine has been restricted. The effect of Sec. 5 and 6 of the Act is merely to provide that the restriction shall not be imposed unless the Government be willing to compensate all persons interested. The obligation to compensate follows upon the imposition of the restriction and is not dependent upon an announcement by the Government that they are willing to pay such

compensation. The effective part of the declaration is the restriction which would have effect against the whole world, (z).

Inspection before or after the expiration of the period of 60 days :—The person entitled to work the mine, when only the surface-land is acquired under section 3 of the Act and the mine is excluded by the Collector by inserting a statement to that effect either in the award, or in his statement of reference or by publication of a declaration as prescribed by section 3, must give a notice to the Local Government of his intention to work the mine at least sixty days before the commencement of the work. Section 5 provides that the Local Government may cause the mines or minerals to be inspected whether before or after the expiration of the said period of sixty days. Section 79 of the Railway Clauses Consolidation Act, 1845, lays down that "If before the expiration of such 60 days the company do not state their willingness to treat with such owner, lessee or occupier for the payment of such compensation it shall be lawful for him to work the said mines, etc."

Section 5 leaves to the discretion of the Local Government to acquire the mines either before the expiration of the period of sixty days from the date of the notice or after the said period. "When a mine-owner gives notice under section 78 of the Railway Clauses Act, 1845, of his intention to work minerals, the Railway Company is not, for the purpose of giving its counter-notice to stop or control the working, *limited to the thirty days for which the mine-owner's notice runs* : that the period of thirty days is merely prescribed as a period until the expiration of which the mine-owner is debarred from working and that the Company can at any time give its counter-notice, though of course if given at any time after the thirty days had expired and the working had been commenced, it would have no effect except as regards the further progress of the workings", (a). We have therefore thought it safe to amend the sections concerned in such a manner that they will in a clear and unmistakable way express the effect of the English Act as construed by the House of Lords." *Report of the Select Committee, dated 23-9-85.*

Declaration under sec. 5 (2) L. A. (Mines) Act. Its effect :—Whenever the Government makes a declaration under Sec. 5 (2) of the L. A. (Mines) Act, the working of the mine is restricted for all time and "by any person," and Government becomes liable to compensate all persons having an interest in the working of the mine and thus affected by the restriction imposed. The compensation is thus in no case restricted to the actual worker. The restrictions which are imposed must *ex necessitate rei* be permanent. Having regard to the scheme of the Act piecemeal dealing with the total interest in the coal is not contemplated, and the embargo which is to be perpetual involves payment of compensation to all interests affected. The moment the declaration is made the full amount of compensation becomes payable by reason of the coal coming under a perpetual embargo, (b).

(z) *Secretary of State v. Lodna Colliery Company*, 15 Pat. 510.

(a) *Dixon v. The Caledonian Railway Co.*, 5 A. C. 820.

(b) *Secretary of State v. Lodna Colliery Company*, 15 Pat. 510 : A.I.R. 1936 Pat. 513.

Mode of determining persons interested and amount of compensation

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870,* for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

Notes

Mode of determining compensation :—The section provides for the manner in which the amount of compensation to be paid under section 5 is to be determined and it lays down that the amount of compensation to be paid under section 5 is to be determined in the manner provided by the Land Acquisition Act (1894), section 23. If the company and such owner, lessee or occupier, do not agree as to the amount of such compensation, the same shall be settled as is done in other cases of disputed compensation *i. e.*, by reference to the Court under sec. 18 of the L. A. Act. *For modes of determining compensation, for acquisition of mines and minerals, vide notes under sec. 23 L. A. Act 1894 Supra.*

Persons interested :—The expression "persons interested" has been defined in section 3 (b) of the L. A. Act (1894). It includes all persons *claiming* an interest in compensation to be made on account of the acquisition of the land under the Act (*vide notes under section 3 (b) of the L. A. Act, supra*). The terms "persons interested" have been substituted in this section in the place of "owner, lessees and occupiers" to avoid the confusion created by the use of these expressions in the English Act. The reasons for substituting these words in the place of "owners, lessees and occupiers" in the English Act are explained in the following manner by the *Report of the Select Committee, dated the 23rd September, 1885* :

"Another important English decision which points to an amendment of the Bill is that in *Smith v. Great Western Railway Co.*, (c), and in appeal before the House of Lords (3 App. Cas. 165). We may have, under a Bill of this sort, a state of things to deal with, of which that case affords an illustration, where one person holding under a terminable lease has an immediate right to work the minerals, and another person is entitled to the reversion on the expiration of the lease and perhaps to a rent or royalty during its continuance. The lease may or may not be of such a length as to admit of all the minerals being worked out during its continuance, and it may or may not be liable to be put an end to by forfeiture or otherwise before the expiration of its term. The provisions of the English Act, which deal specially with the subject now before us, and which have been incorporated in the Bill, were found inadequate to provide for the exigencies of such a state

* See now the Land Acquisition Act 1 of 1894.

(c) *Smith v. Great Western Ry. Co.*, 2 C. D. 245.

of things as that referred to. They probably contemplate a settlement only with the person immediately entitled to work the mines, and in order to provide for the case of a reversioner or other person interested, it was found necessary to call in the aid of a general provision of the law which would be out of place in a Bill like this. It appears to us that the simplest mode of dealing with the various interests that may co-exist in the mines is to require, in accordance with the scheme of the Land Acquisition Act that they should all, whether present or future, be considered and compensated for simultaneously, whenever the owner of the surface has occasion to exercise his power of stopping or controlling the working. We have accordingly provided in effect that where the person immediately entitled to work the mines intimates to the owner of surface his intention to work them, and the latter after that determines to stop or control the working, the settlement of compensation must extend to all persons interested in the mines and the stoppage or control will be binding in perpetuity on all alike."

Owners, lessees and occupiers :—"The word 'owner' when used in relation to a mine means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof ; and does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof ; or is merely the owner of the soil and not interested in the minerals of the mine ; but any contractor for the working of the mine or any part thereof shall be subject to the Act in like manner as if he were an owner, but not so as to exempt the owner from any liability"—*Section 3 (c) of the Indian Mines Act VIII of 1901*. A lessee of Government, holding the land for cultivation or for grazing purposes only, has no right to minerals or to take out and cart away the earth and, therefore, cannot claim for the earth removed, (d).

Rights of lessees and sub-lessees :—A person not working the mines as an intermediary before vesting of the mines in the State of Bihar, will not get the status of a lessee. A person being a subsisting lessee immediately before the vesting of the mines in the State Government, will become a direct lessee under the Government.

Rents and Royalties :—Rent must be profit, certain in nature, arising from the thing demised and not part of the demised thing itself. Royalty in mining lease signifies that part of the *reddendum* which is variable and depends upon the quantity of minerals gotten. Royalty is not equivalent to rent, (e).

Measure of compensation :—The mine owner prevented from working his minerals is to be fully compensated—the Act says so. That means that so far as money can compensate him, he is to be placed in the position in which he would have been if he had been free to go on working. The true enquiry here is not what is the value of the coal field or of the coal but what would the colliery company, if they had not been prohibited, have made out of the coal

(d) *Burma Railways Co. Ltd. v. Maung Hla Tin*, 5 Rang 813 : 1928, A. I. R. (R) 85.

(e) *Bihar Mines Ltd. v. Union of India*, 1967 (2) S. C. A. 1 and *Sone Valley Portland Cement Co. Ltd. v. The General Mining Syndicate Ltd.*, I. L. R. 1967 (2) Cal. 450

during the time it would have taken them to get it. In, (f), the owners of a coal mine under and near water-works gave the undertakers notice under section 22 of Water-works Clauses Act, 1874, that they intended to work the coal. The undertakers replied by a counter-notice requiring the mine-owners not to work and stating their willingness to make compensation. In an arbitration under the Act to assess the compensation the mine-owners gave evidence to prove that coal rose in value after the date of the counter-notice. It was held that there was no purchase of the coal or transfer of the property in the coal ; that the enquiry was not what was the value of the coal at the date of the counter-notice but what would the coal-owners, if they had not been prohibited, have made out of the coal during the time it would have taken them to get it and that the evidence is admissible.

One effect of this is that if the enquiry takes place some time after the notice is given, all unexpected and unforeseen alterations in the price of the mineral which have taken place in the interval may properly be taken into account in assessing the compensation. When the compensation payable under sec. 6 has been arrived at by the arbitration proceedings and awarded in a lump sum it is not permissible to go into evidence in order to explain the award although it may well be that there has been an over payment, (g).

Statutory allowance under sec. 23 (2) L. A. Act :—Sec. 23 (2) of L. A. Act is clearly inapplicable and can not be invoked in the case of acquisitions effected under the L. A. (Mines) Act as the circumstances are very different from each other, (g).

Agreement as to the amount of compensation for acquisition of mines :—Notwithstanding the provisions of sec. 6 of the L. A. (Mines) Act it is competent for the parties to enter into an agreement as to the amount of compensation payable under the Act, and an agreement so made can be enforced in the ordinary way, (g).

Apportionment of compensation for acquisition of mines :—In the case of mines worked by a lessee under royalty holders, the amount of compensation jointly payable to royalty holders and the lessee cannot exceed in the aggregate the value of the coal locked up, which would otherwise have been raised and sold, less the working costs. The value so ascertained has to be divided up amongst the claimants, each of the lessors or royalty-holders taking out of such sum his appropriate royalty, and the balance going to the lessee working the mines as his profit. The payment by the Government of the whole amount of compensation to any of the several claimants is no defence against a claim by another claimant who has lost his profit by reason of the restriction imposed by the Government, (g).

If appropriate Government does not offer to pay compensation, mines may be worked in a proper manner

7. (1) If before the expiration of the said sixty days the appropriate Government does not publish a declaration as provided in section 5,

(f) *The Bullfa and Merthyr Dare Steam Collieries Ltd. v. The Pontypridd Water Works Co. Ltd.* (1903), A. C. 426.

(g) *Secretary of State v. Lodna Colliery Co.*, 15 Pat. 510 : A. I. R. 1936 Pat. 513.

the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense repair the damage or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the appropriate Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the appropriate Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

Notes

Right to work the mines :—Section 7 is section 79 of the Railway Clauses Consolidation Act 1845 with slight modification. Section 79 of the Railway Clauses Consolidation Act, 1845, runs as follows :—

“If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee or occupier for the payment for such compensation, it shall be lawful for him to work the said mines or any part thereof, for which the company shall not have agreed to pay compensation so that the same be done in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the district where the same shall be situate and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed as the case may require, and such damage made good by the owner, lessee or occupier, of such mines, minerals and at his own expense and if such repair or removal be not forthwith done or if the company shall so think fit without waiting for the same to be done by such owner lessee or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee or occupier the expense occasioned thereby, by action in any of the superior Courts.”

When a mine-owner gives notice under section 78 of the Railway Clauses Act, 1845, of his intention to work minerals, the Railway Company is not for the purpose of giving its counter-notice to stop or control the working limited to the thirty days for which the mine owner's notice runs, that the period of thirty days is merely prescribed until the expiration of which the mine owner is debarred from working and that the Company can at any time give his counter-notice though of course, if given at any time after the thirty days had expired and the working had been commenced, it would have no effect except as regards the further progress of the working, (h).

(h) *Dixon v. The Caledonian Railway Co.*, 5 A. C. 720.

Manner of working the mines :—If before the expiration of 60 days the Local Government does not publish a declaration for acquisition of the mines as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such declaration is subsequently made, *work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the local area where the same are situate*. The mineowner may work his mines in a manner beneficial to himself, in order to win the largest quantity of minerals that the mine will yield but not so as to depart from the usual manner of working in the district, (i). If in any particular spot the minerals come so close to the surface that it is necessary for the beneficial working of these minerals, and according to the usual manner of working them in the district, that they shall be worked from above downwards the mine-owner has a right to do it, (j). But it has been observed by Lord Macnaghten in, (k), "I do not think that it necessarily follows that a mine-owner who is entitled to withdraw support by working his mine in the ordinary course, if the company did not compensate him, is entitled to *enter upon the surface* which unquestionably belongs to the Railway Company, and break it up by working from the surface."

Damage to the surface by the improper working of the mines :—If any damage or obstruction is caused to the *surface* of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, *at his own expense* repair the damage or remove the obstruction as the case may be. If the repair of the damage or removal of the obstruction is not at once effected or if the Local Government so thinks fit, without waiting for the same to be effected by the owner, occupier or lessee, may execute the same and recover from the owner, lessee or occupier the expenses occasioned thereby.

The Local Government acquires the land for the company and the land vests absolutely in the company after the Local Government has delivered possession thereof to the company. Should thereafter any damage be caused to the surface of the land or any works thereon, by the improper working of the mine by the mine-owner, it is not clear what interest has the Local Government to recover damages for the laches of the mine-owner. If anybody has any right to recover damages, it is the company in whom the land has vested. To remove the anomaly it has been provided in section 14 of the L. A. (Mines) Act XVIII of 1885 that "section 4 to 13 both inclusive shall be read as if for the words 'the Local Government' wherever they occur in those sections, the words 'the local authority or company as the case may be which has acquired the land' were substituted."

How are damages to be recovered :—Section 79 of the Railway Clauses Consolidation Act, 1845, contains the provision that in case of damages done to the surface of the land or any work thereon by the improper working of the

(i) *Great Western Railway Co. v. Bennet*, L. R. 2 H. L. 27.

(j) *Rueben Brick Co. v. Great Western Ry Co.* (1893) 1 Ch. 427.

(k) *Midland Ry. Co. v. Robinson*, L. R. 15 App. Cas. 19 ; *In re Todd Brilestone & Co.* (1903) 1 K. B. 603.

mines, by the mine-owner "it shall be lawful for the company to execute the same and recover from such owner, lessee or occupier the expense occasioned thereby, *by action in any of the superior Courts.*" Section 7 of the Land Acquisition (Mines) Act is silent on that point as to how are damages to be recovered.

The Select Committees in their report dated 23-9-85, regarding section 11 of the Bill (section 14 of the Act) observed : "if the Local Government or the company exercising the powers of the Local Government neglects to come to terms with the mine-owners on his giving notice of his intention to work it, he does so at the risk of its property. If considering that the mine-owner is working improperly, it takes steps under section 7 to remedy the mischief with a view to charging the mine-owner with the cost, it does so at the risk of losing its money and of incurring serious legal consequence, *if the Court before which the case may ultimately come takes a different view of the matter.* Similarly, if it considers that the mines are being worked contrary to the provisions of the Act, and proceeds to take steps under section 14, it still acts at its own risk, for it is by no means certain that it will appear to the Court that the mines were being so worked." There is no room for doubt that in drafting section 7 the Legislature had in view the procedure mentioned in section 79 of the Railway Clauses Consolidation Act, 1845, though the words "by action in superior Court" have been omitted from the section.

Mining communications

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines ; but no such air-way, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the appropriate Government in this behalf, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

Notes

Amendment :—By section 2 of the Devolution Act XXXVIII of 1920, the words "Local Government" have been substituted for the words "Governor-General in Council" in section 8. The word "appropriate" has been substituted for "Local" by Adaptation of Laws Order, 1950.

Mining communications :—This is section 80 of the Railway Clauses Consolidation Act, 1845. The section refers to the working of the mines *excepting the portion that lies immediately underneath the surface acquired*, and the working of which is prevented or restricted, and affords facility to

the mine-owner to work his mine in those parts, which he is not prevented from working; and if in working in these parts beneficially it becomes necessary to cut and make airways, headways, gateways, or water-levels *through the mines, measures or strata, the working whereof is prevented or restricted*, he may cut and make such and so many airways, gateways, headways, or water-levels, *through the mines, measures or strata the working whereof is prevented or restricted*, but subject to the proviso that such airway, headway, or water-level *through the mines, measures or strata the working whereof is prevented or restricted*, be not of greater dimensions or section than may be prescribed by the Local Government and if no dimensions or sections are prescribed by the Local Government not greater than 8' wide and 8' high and provided the same airways, headways, gateways, or water-levels be not cut or made upon any part of the surface or works or so as to injure the same or to interfere with the use thereof. He is not entitled to claim access over a Railway since that would constitute a trespass, (1).

Appropriate Government to pay compensation for injury done to mines

9. The appropriate Government shall from time to time pay to the owner, lessee or occupier of any such mines, extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the land lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works and for any minerals not acquired by the appropriate Government which can not be obtained by reason of the action taken under the foregoing sections ; and if any dispute or question arises between the appropriate Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the L. A. Act, 1870*.

Notes

Genesis of the section :—“Sections 8, 9 and 10 corresponding to sections 80, 81 and 82 of the Railway Clauses Consolidation Act, 1845 have been introduced out of deference to the wishes and representations made by coal companies. We have introduced these new sections 8, 9 and 10, corresponding to sections 80, 81 and 82 of the Railway Clauses Consolidation Act 1845. We question whether the object of these sections would not have been otherwise attained through the medium of the Land Acquisition Act,

(1) *Midland Railway Co. v. Miles*, (1886) 30 Ch. D. 634.

* See now the Land Acquisition Act 1 of 1894.

the provisions of which were made applicable by section 6 of the Bill as introduced ; but as importance appeared to be attached to them in the memorial of the Coal Companies, we have thought it better to remove all doubt by including them. They will doubtless overlap section 6 of the Bill, but no practical harm will result from this." *Para. 8 of the Select Committee Report dated 23-9-85.*

Compensation for additional expenses :—Under section 81 of the Railway Clauses Consolidation Act, 1845, an owner or lessee of mines under adjoining lands is entitled to compensation for additional expenses incurred through the difficulty of obtaining access by tunnelling under a Railway, (1). Where the expense though not actually incurred is capable of immediate ascertainment it can be recovered at once, (1^a).

And also for injury arising from any airway or other work

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway, or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the appropriate Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

Notes

Compensation to owners of land :—This is section 82 of the Railway Clauses Consolidation Act, 1845. The section refers to compensation payable to the owner or occupier of lands over the mines the working of which has been prevented or restricted by reason of the making of any airway or other works, which would not have been necessary if the working of the mines had not been prohibited or restricted.

Power to officer of appropriate Government to enter and inspect the working of mines

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the appropriate Government may after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith ; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the part of the mines which have been, are being or are about to be worked.

(1^a) *Re : Whitehouse Wolverhampton Railway Co., L. R. 5, Ex. 6.*

Notes

Inspection of Mines :—This is section 83 of the Railway Clauses Consolidation Act, 1845. The officer appointed by the Local Government is generally the Inspector of Mines or the Chief Inspector of Mines whose chief duty is to see whether the surface of the land acquired is likely to be affected by the working of the mines underneath and whether proper means have been adopted by the owner, the lessee or occupier of the mines for the working of the mines, so as not to affect the surface of the land above. The owner, occupier and lessee of the mine is bound to give the officer appointed by the Local Government for inspection of the mines, every facility to inspect the same ; in default to be liable to a penalty of Rs. 200.

Penalty for refusal to allow inspection

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the appropriate Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

Notes

Penalty for refusal to allow inspection :—This is section 84 of the Railway Clauses Consolidation Act, 1845, and the section makes it obligatory on every owner, lessee or occupier of the mine to allow the officer appointed by the Local Government for inspection of the mine, on his giving 24 hour's notice. And the owner, lessee or occupier of the mines renders himself liable to a fine not exceeding Rs. 200 in case he fails to give the officer inspection as per notice.

If mines worked contrary to provisions of this Act, appropriate Government may require means to be adopted for safety of land acquired

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the appropriate Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired and the works thereon, and preventing injury thereto ; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the appropriate Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

Notes

Object of the section :—This is section 85 of the Railway Clauses Consolidation Act, 1845. The object of the section is to prevent damage to the

surface of the land acquired or any works thereto and if for that purpose the Government on the report of inspection of the officer appointed for the purpose, thinks that additional measures are to be adopted, it shall give notice to the owner, lessee or occupier of the lease to take such measure within a time specified therein and in default of compliance the Government is given the power to construct the works necessary for *making safe the land acquired*. The Local Government must be re-imbursed the costs incurred therefor by the owner, lessee or occupier of the mines.

Notes

Working of mines contrary to the provisions of the Act :—The owner, lessee or occupier works the mines contrary to the provisions of the Act (1) where he works the mines—sixty days before he commences the work (section 4) ; (2) when he works the mine in spite of a counter-notice by the Local Government forbidding him to work the mines (section 5) ; (3) when he does not work the mines in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the local area where the same are situate, and according to the instructions issued by the Local Government after inspection under section 13.

Construction of Act when land acquired has been transferred to a local authority or Company

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to, or has vested, by operation of law, in a local authority or Company, then sections 4 to 13 both inclusive, shall be read as if for the words "the appropriate Government," wherever they occur in those sections, except in section 5, sub-section (5) and section 8, the words "the local authority or Company as the case may be, which has acquired the land" were substituted.

Notes

Amendment :—By section 2 of the Devolution Act XXXVIII of 1920, the words "except in section 5, sub-section (5) and section 8" have been inserted after the words "those sections." The word "appropriate" has been substituted for "Local" by Adaptation of Laws Order, 1950.

Delegation of authority :—The Select Committee in their Report dated 23-9-85 observed ; "An objection has been taken in some quarters to section 11 of the Bill as introduced (now section 14) which in effect gives to certain companies the power conferred on the Local Government by some of the foregoing provisions of the Bill. It appears to be overlooked that the section in question can apply only to companies established for such purposes and occupy such a position from a public point of view as would warrant the Government in acquiring land on their behalf. In particular, it is provided by (sections 48 and 49 of) the Land Acquisition Act, that land shall not be

acquired for a company under that Act unless it is needed for a work likely to prove useful to the public, and the company enters into an agreement with the Government settling among other matters, the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use it.

We may further observe that there appears from some of the papers considered by us to be a certain amount of misapprehension as to the nature of the powers referred to.

If the Local Government or the Company exercising the power of the Local Government neglects to come to term with the mine-owner on his giving notice of his intention to work, it does so at the risk of its property. If, considering that the mine-owner is working improperly, it takes steps under section 7 to remedy the mischief with a view to charging the mine-owner with the cost, it does so at the risk of losing its money and of incurring serious legal consequences, if the Court before which the case may ultimately come takes a different view of the matter. Similarly, if it considers that the mines are being worked contrary to the provisions of the Act and proceeds to take steps under section 13, it still acts at its own risk, for it is by no means certain that it will appear to the Court that the mines were being so worked.

Thus the powers in question are very far from being so formidable as have been supposed, and we may add that they are framed as closely as possible on the lines of those conferred by Parliament on Railway Companies in England, the substance of which seems generally to have met with approval.

We have placed local authorities on a footing similar to that of Companies, as in many recent Acts the provisions of the Land Acquisition Act have been made applicable for the purpose of acquiring land for such authorities."

15. (*Pending Cases.*); Repealed by the Repealing and Amending Act XX of 1957 Sec. 3, Sch. II;

Definition of local authority, company and appropriate Government

16. In this Act—

(a) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

(b) "Company" means a Company registered under any of the enactments relating to companies from time to time in force in India, or formed in pursuance of an Act of Parliament of the United Kingdom or by Royal Charter or Letters Patent.

(c) "Appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government, and in relation to acquisition of land for any other purposes, the State Government".

Notes

Local authority :—The Select Committee in their Report dated 23-9-85 says—"We have placed 'local authorities' on a footing similar to that of companies, as in many recent Acts the provisions of the Land Acquisition Act have been made applicable for the purposes of acquiring land for such authorities."

By the Adaptation of Laws Order, 1950, issued under The Constitution of India, the following Adaptations have been made in section 16 of the L. A. (Mines) Act, XVIII of 1885, namely, in Clause (a) of Section 16 for "the Provinces," "Part A States and Part C States" are substituted and after "Act of Parliament" the words "of the United Kingdom" are inserted and after the cl. (b) cl. (c) is added which runs as follows :—

"(c) 'Appropriate Government' means in relation to acquisition of land for the purposes of the Union, the Central Government, and in relation to acquisition of land for any other purposes, the State Government."

This Act to be read with Land Acquisition Act, 1870

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870*.

Notes

Application of the L. A. Act I of 1894 :—Section 2 of the Land Acquisition Act I of 1894 provides that "All proceedings commenced, officers appointed or authorised, agreements published and rules made under the Land Acquisition Act, 1870, shall as far as may be deemed to have been respectively commenced, appointed or authorised, published and made under this Act. And any enactment or document referring to the said Land Acquisition Act, or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof." Hence this Act shall, for the purposes of all enactments, for the time being in force, be read with and taken as part of the Land Acquisition Act, 1894.

* See now the Land Acquisition Act I of 1894.

PART II

CHAPTER III

THE GOVERNMENT OF INDIA ACT, 1935.

(26 Geo. V and 1 Edw. VIII c. 2)

(Summary and Extracts)

Part II of the Act deals with the Federation of India including in its various Chapters provisions as to Federal Executive, Federal Legislature, the Legislative powers of Governor-General and provisions in case of failure of Constitutional machinery. Part III of the Act deals with Governor's Provinces and various Chapters dealing with Provincial Executive, Provincial Legislatures, Legislative powers of Governors and the provisions in case of failure of Constitutional machinery. Part V of the Act deals with Legislative Powers.

Section 45 provides for the powers of the Governor-General to issue proclamations declaring failure of Constitutional machinery and suspending whole or part of this Act and to legislate. S. 93 gives similar power to the Governor of a Province and S. 102 gives similar powers to the Federal Legislatures after a Proclamation of Emergency is declared by the Governor-General and it is provided that the Federal Law shall always prevail over the Provincial laws in emergency. S. 99 provides that the Federal Legislature may make laws for whole or any part of British India and a Provincial Legislature for the Province.

There are three Lists viz., the Federal List (list I), the Provincial List (list II), and the Concurrent List (list III) in the Seventh Schedule to the Act.

S. 104 deals with what are called the Residual Powers of Legislation. It enacts that the Governor-General may, by public notification, empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the lists in the Seventh Schedule to the Act.

The relevant provisions of the Government of India Act, 1935, relating to acquisition and compensation (secs. 127, 175, 299) are hereunder reproduced :

127. Acquisition of land for Federal purposes :—The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

175. Power to acquire property and to make contracts, etc. :—(1) The executive authority of the Federation and of

a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the purposes of the Government of the Federation or of the Province, as the case may be, and to the purchase or acquisition of property on behalf of His Majesty for those purposes respectively and to the making of contracts.

(2) All property acquired for the purposes of the Federation of a province, as the case may be, shall vest in His Majesty for those purposes.

(3) All contracts made in exercise of the executive authority, of the Federation or of a Province shall be expressed to be made by the Governor-General or by the Governor of the Province as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor-General or Governor by such person and in such manner as he may direct or authorise.

(4) Neither the Governor-General, nor the Governor of a Province, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purpose of this Act, or for the purposes of the Government of India Act or any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Notes

Principles for the transfer of lands between the Central and Provincial Government :—

(Extract from Govt. of India letter No. F. 172—11/35 L. & O. dated the 15th June, 1937).

“(a) *Acquisition of land for Federal purposes.*—Section 127 of the Government of India Act, 1935, provides that when land belonging to a private party is required to be acquired on behalf of the Federation, the acquisition shall be at the expense of the Federation. The suggestion made in this Department letter of the 18th November, 1935, were intended to apply only to cases where the land required to be transferred is in the occupation of the Provincial Government. In such cases the amount payable by the Central Government will ordinarily be the market-value of the land and buildings, if any, thereon ; the capitalised value of the land revenue assessable thereon will be included in cases where the transfer of the land causes actual loss of land revenue to the Provincial Government.

(b) *Continuance of the first refusal to Provincial Governments of land that is surplus to the requirements of the Central Government.*—When the Central Government no longer require land in their possession, the Provincial Government of the Province in which it is situate will be given the option

of assuming possession of the whole or any portion thereof, subject to the following conditions :—

- (a) The Central Government themselves will be the judges of whether they require to retain any particular land or not ;
- (b) If the Provincial Government desire to assume possession of the land, the option to do so should be exercised within six months of the date on which the Central Government signify their intention of surrendering the land ;
- (c) The amount payable for the land will in all cases be its market-value at the date of transfer ;
- (d) When the Provincial Government desire to assume possession of only a portion of the land surrendered, they shall be entitled to do so only if value of the land is not materially reduced by the division.

On the establishment of the Federation, it will be for the Federal Government to decide whether this option should be continued or not ; and

- (e) Central Government may require land which the Provincial Government may themselves have acquired on payment of the 15 per cent. compensation for compulsory acquisition. As the market-value is determined by the amount paid in recent transactions, if the Central Government wished to have a piece of land which the Provincial Government had recently acquired, the extra 15 per cent. paid on compensation would be an element in the market-value. If, on the other hand, the Provincial Government had acquired the land a considerable time previously, the value of the land might have changed substantially in the interval and it would not be suitable to make specific provision for this element."

(Extract from Government of India, Department of Education, Health & Land, letter No.F. 172—1/35—L.&O. dated 4th November, 1937) to Secretary to the Government of Bombay, Revenue Department.—“Under the Secretary of States’ Land Transfer Rules, the Central Government were entitled in cases where the capitalised value of the Land Revenue had been paid to Local Government on acquisition to a refund of such capitalised value whether the land was transferred back to the Local Government themselves or sold to private parties. The Central Government accordingly consider that, when such land is in future re-transferred to the Provincial Government, the amount payable for such transfer should include the refund of the capitalised value. Even in cases where such land is disposed of to private parties, the Central Government consider that a case can be made out for the refund of the capitalised value by the Provincial Government. In view, however, of the practical inconvenience likely to be involved, the Central Government are pleased to waive the refund in such cases.

“As regards the enquiry made in paragraph 3 of the letter under reply, I am to say that the Central Government agree to the proposal that before disposing of any land in the Province, the Central Government should

consult the Provincial Government as to the terms and conditions to be applied and will, as far as possible, dispose of the land subject to any conditions which the Provincial Government may desire to impose. This agreement is, however, subject to the proviso that the Central Government will not necessarily be bound to obtain the concurrence of the Provincial Government in all cases, while in cases of disagreement the Central Government must be the sole judge of the terms and conditions to be imposed."

299. Compulsory acquisition of land etc. :—(1) No person shall be deprived of his property ¹[in British India] save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land or any commercial or industrial undertaking, or any interest in, or in any company owning any commercial or industrial undertaking, unless the law provides for payment of compensation for the property acquired and either fixes the amount of the compensation or specifies the principle on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either chambers of Legislature without the previous sanction of the Governor-General, or in chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

¹ Added by India (Provisional Constitution) Order, 1947,

PART II

CHAPTER IV

THE DEFENCE OF INDIA ACT XXXV OF 1939.

&

THE RULES MADE THEREUNDER

(Relevant provisions only)

Compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property, etc.

*19. (1) Where by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation the amount of which shall be determined in the manner, and in accordance with principles, hereinafter set-out, that is to say :—

- (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.
- (b) Where no such agreement can be reached the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the above mentioned Act for appointment as a Judge of a High Court.
- (c) The Central Government may, in any particular cases, nominate a person having expert knowledge as to the nature of the property acquired to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.
- (d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.
- (e) The arbitrator in making his award shall have regard to—
 - (i) the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894 so far as the same can be made applicable ; and
 - (ii) whether the acquisition is of a permanent or a temporary character.
- (f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.

* Amended by Defence of India (Fourth Amendment) Ordinance No. XLV of 1945. (See Chapter V *Supra*). Cl. (e) was amended besides addition of Sections 19A & 19B.

(g) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

(2) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.

(3) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe :—

(a) The procedure to be followed in arbitration under this section ;

(b) The principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal ;

(c) The maximum amount of an award against which no appeal shall lie.

Rule 75 A framed under the Defence of India Act, 1939

Requisitioning of property

75A. (1) If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, movable or immovable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning :

Provided that no property used for the purpose of religious worship and no such property as is referred to in rule 66 or in rule 72 shall be requisitioned under the rule.

(2) Where the Central Government or the Provincial Government has requisitioned any property under sub-rule (1), that Government may use or deal with the property in such a manner as may appear to it to be expedient and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official gazette a notice stating that the Central or the Provincial Government, as the case may be, has decided to acquire it in pursuance of this rule.

(3) Where a notice of acquisition is served on the owner of the property or published in the official gazette under sub-rule (2) then at the beginning of the day on which the notice is so served or published, the property shall vest in Government free from any mortgage, pledge, lien or other similar encumbrance, and the period of the requisition thereof shall end.

(4) Whenever in pursuance of sub-rule (1) or sub-rule (2) the Central Government or the Provincial Government requisitions or acquires any moveable property, the owner shall be paid such compensation as that Government may determine :

¹[Provided that where immediately before the requisition, property was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined by the Govern-

ment as the total compensation payable in respect of the requisition or acquisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the Government in this behalf may decide to be just].

(5) The Central Government or the Provincial Government may, with a view to requisitioning any property under sub-rule (1) or determining the compensation payable under sub-rule (4), by order—

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to property as may be so specified ;

(b) direct that the owner, occupier or person in possession of the property shall not without the permission of Government dispose of it ²[or where the property is a building structurally alter it] till the expiry of such period as may be specified in the order.

³[(5a) Without prejudice to any powers otherwise conferred by these Rules any person authorised in this behalf by the Central Government or the Provincial Government may enter any premises and inspect such premises and any property therein or thereon for the purposes of determining whether, and if so, in what manner, an order under this rule should be made in relation to such premises or property, or with a view to securing compliance with any order under this rule.]

(6) Any orders made, and any action taken under or in relation to rule 76, 79 or 83 before the 16th May, 1942, shall be deemed to have been made or taken under or in relation to this rule and to be as valid as if this rule had been then in force.

(7) If any person contravenes ¹[any order made under this rule] he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Notes

Acquisition and Requisition

Acquisition :—There is no definition of acquisition given in S. 3 of The L. A. Act, but Part II of the Act deals under the heading of acquisition with the procedure with reference to them. Under these provisions the word 'acquisition' was used as meaning taking over of the land which was to vest absolutely in the crown free from all encumbrances and that was the only sense in which the word 'Acquisition' was used.

Temporary occupation of land provided for in Part VI of the Act appears to have been enacted in the Act not because such temporary occupation of land was included in the acquisition of land which was the object of the enactment of that Act, but because as stated in the proviso to section 36 (2) of the Act, the persons interested in the land, the subject matter of such temporary occupation thereof, were entitled to, if the land had become

2. Inserted by Def. Dept, notification No. 1336 O.R./42 dt. 2J.6.42

3.

Do

No. 1477. OR/42, dt. 1. 8. 42.

permanently unfit to be used for the purpose for which it was used immediately before the commencement of such temporary occupation, to require the appropriate Government to proceed under that Act, to acquire that land as if it was needed permanently for a public purpose or for a company.

Before possession is taken the Government can withdraw from the acquisition of land. No such power however, was given in cases provided for in S. 36 of the Act, because in these cases the persons interested in the land were entitled, if the land became unfit as stated before, to require the Government concerned to proceed under the Act, to acquire it permanently as if, for a public purpose.

These provisions show that far from establishing that the temporary occupation of land provided in Part VI of the Act was included in the acquisition, go to establish that a clear demarcation was made by the legislature between the acquisition of land vested absolutely in the crown free from all the encumbrances on the one hand and the temporary occupation and use of waste or arable land and which did not create any rights in the Government beyond the rights of such temporary occupation thereof.

Temporary occupation of land for public purposes or for a company is not included in the compulsory acquisition of land, (a).

Requisition :—‘Requisition’ has been defined in rule 2, sub-rule 11 of the Defence of India Rules 1939 as “ ‘requisition’ means in relation to any property, to take possession of the property or to require the property to be placed at the disposal of the requisitioning authority”. ‘Requisition’ is always understood to mean a dominion or control of the property and not the acquisition of the rights of ownership. It is not included in, nor is it an ancillary or subsidiary matter which can fairly and reasonably be said to be comprehended in the item of compulsory acquisition of land.

In requisition the owner loses his possession and so requisition in relation to land without more, is the acquisition of an interest in land for a time or for an uncertain period as the case may be, (b).

In case of acquisition, a fair value at the date of acquisition, must have to be paid as compensation.

In requisition, the fair rental value of the property requisitioned shall have to be paid as compensation and the property is to be restored in original condition existing at the time of requisitioning or in lieu, proper compensation for any permanent loss occurring on the land having used it for military purpose etc.

Acquisition of land are provided in various statutes empowering various statutory bodies to acquire land for public purposes, but all those acquisitions shall have to be made through the Collectors under the Land Acquisition Act.

In lands dealing with requisitions, permanent acquisitions are also provided on payment of compensation in most cases, from the date of acquisition, but in some cases from date of requisition.

(a) *Tan Bug Taim v. Collector of Bombay*, 1945, F. L. J. 247.

(b) *Province of Bengal v. Board of Trustees*, A. I. R. 1946 Cal. 416.

Requisitions were at first made as emergency provisions under the Defences of India Acts and Ordinances, but now as regular provisions viz. Requisitioning and Acquisitions of Immovable Properties Acts etc., even in normal times.

Procedures are also different. The offer of compensation made by the Government under D. I. Act is not an award within meaning of S. 11 of the L. A. Act. Collector's power under D. I. Act is much wider than under L. A. Act and the Central Government can interfere and ask the arbitrator to make further investigations in the matter.

So it follows that it is not correct to say that 'requisition' is same thing as temporary acquisition, but it may be said 'requisition' is an acquisition of an interest in land for a temporary period, (c). Under the L. A. Act only land and things attached to land can be acquired but under requisitioning Acts, any movable or immovable property including an undertaking or business concern or motor vehicle can be requisitioned.

There is no question of restoration of possession of land after it is acquired finally, but in case of requisition property has got to be de-requisitioned and/or restored in its original condition at any time generally, or it can be acquired.

Defence of India Act No. XXXV of 1939 and Rules

History of Legislation :—Requisitioning and acquisitions of both movable and immovable properties became a necessity for the purpose of security and defence during the last wars and subsequent emergent conditions prevailing in the country. The power to requisition was provided in the Defence of India Act No. 35 of 1939 and Rules made thereunder and which were enacted and framed by a Proclamation of Emergency made by the Governor-General of India under sub-section (1) of S. 102 of the Government of India Act, 1935 on 3rd September 1939 and which expired on 1st October 1946 i.e., six months after the revocation of Proclamation by Notification No. 54/56-GG(s) dated 1-4-46 in pursuance of cl. (a) of sub-sec. (3) of S. 102 of the Government of India Act 1935. Thereafter it was continued by virtue of addition to S. 1 (4) made by the Ordinance No. XII of 1946. In the meantime the said Act of 1939 was amended by the Defence of India (Fourth Amendment) Ordinance No. XLV of 1945 introducing a proviso to cl. (e) of S. 19 and adding two new sections viz., sections 19A and 19B in the Act of 1939. It was thereafter continued by the Repealing Ordinance No. 1 of 1946 on 5-1-46.

Before the expiry of the Defence of India Act, 1939, the British Parliament enacted the India (Central Government Legislative) Act, 1946. Section 3 of this Act conferred on the Dominion Legislatures power to make laws providing for the continuance of requisitions made under the D. I. Act 1939. But by section 4 the power was limited to one year in the first instance, capable of being extended to two years by notification by the Governor-General and of being extended to a maximum period of five years by annual resolutions of the Dominion Legislature. Under the powers conferred by that section the Requisitioned Land (Continuance of Powers) Ordinance No. XIX of 1946

was at first promulgated on 25-9-46 before the expiry of the D. I. Act on 1-10-46 and thereafter it was continued by Ordinance No. XX of 1946 (25-9-46), and then the Ordinance No. XIX of 1946 was repealed and replaced by the Requisitioned Land (Continuance of Powers) Act XVII of 1947. By S. 3 of this Act it was provided that the expiration of the Defence of India Act 1939 and the Rules made thereunder and the repeal of the Ordinance, all requisitioned lands shall continue to be subject to requisition until the expiry of the Act. Section 6 provided that compensation for the requisition shall be determined and paid in accordance with the provisions of S. 19 of the D. I. Act 1939 and rules made thereunder.

After the Indian Independence the Constitution of India came into force on 26-1-50 and Art. 372 continued all laws in force immediately before the commencement of the Constitution with the exception of the temporary Acts which expired by virtue their own provisions. So the D. I. Act 1939 died a natural death, (d). Then the Parliament has replaced the Act of 1947 by the Requisitioning and Acquisition of Immovable property Act No. 30 of 1952, on 14-3-52. This Act provides in sub-section (2) of Sec. 24 to the effect that any property which immediately before such repeal (of Act XVII of 1947) was subject to requisition, shall on the commencement of 'this Act' be deemed property requisitioned under s. 3 of 'this Act' and the provisions of 'this Act' shall apply accordingly. The life of 'this Act' was originally six years from the date of its commencement (14-3-52) later extended to 12 years by Act 1 of 1958, and all proceedings pending during currency of the Act; since D. I. Act 1939 shall be guided by this Act, (e)

Thereafter the Requisitioning and Acquisition of Immovable Property (Amendment) Act 48 of 1962 (14-12-63) and then the Defence of India Act No. 51 of 1962 were brought into force. Then the Requisitioning and Acquisition of Immovable Property (Amendment) Act No. 31 of 1968 was enforced being further amended and the period extended by Act 1 of 1970 (March, 1970).

The Defence of India Act No. 42 of 1971 came into force on 4.12.71 after Proclamation of Emergency on 3.12.71. Section 33 of the said Act continues all proceedings pending under the Requisitioning and Acquisition of Immovable Property Act No. 30 of 1952 particularly when the property is not de-requisitioned or when no agreements or awards made and that such property shall be deemed to be requisitioned under S. 23 (1) of the said Act of 1971.

Property—meaning of :—The words "any property, movable or immovable" used in S. 2 (2) (xxiv) of the Defence of India Act must necessarily include all kinds of property, land, building, machinery and chattels of any kind and anything that can be described as property and this would cover a business and its goodwill which are essential ingredients of a commercial undertaking. Hence by virtue of the powers vested in it under S. 2 (2) (xxiv) of the Defence of India Act and Rule 75A of D. I. Rules 1939,

(d) *Dominion of India v. Shrinbai A. Irani*, A. I. R. 1954, S. C. 594; *State of U. P. v. Jugamandar Das*, A. I. R. 1954, S. C. 683.

(e) *Union of India v. Nirode K. Sen*, 75 C. W. N. 880.

the Government would have power to requisition a commercial business like that of a restaurant as a running concern, (f). But the Government has no power to acquire, under this rule, but can only control an undertaking for the duration of the war and a limited period thereafter, (g). Further the rights in or over an immovable property which is subject matter of enactment in S. 299 of the Government of India Act, are proprietary rights in the sense of right, title or interest therein and not the rights of temporary use and possession of same which are the rights vested in the Government by requisition, accordingly the requisition of an immovable property can not be taken to be included in that term 'Acquisition' (b), *ibid.* Temporary acquisition of an interest such as possession of land without more, is called requisition, (h).

Power to legislate and public notification :—Under Section 104 (1) of the Government of India Act the Central Legislature had not the power to enact a provision with regard to 'Land' and requisition of land or immovable property as comprised in S. 2 (2) (xxiv) of the D. I. Act 1939 and rule 75-A of D. I. Rules 1939 framed thereunder in the absence of any public notification by the Governor-General issued in exercise of his residual powers of legislation empowering the Central Legislature to enact a law with reference thereto. Requisition of land is not ancillary or subsidiary matter which can fairly and reasonably be said to be comprehended in the item of compulsory acquisition of land which is item No. 9 in List II of the Seventh Schedule of the same list. Hence S. 2 (2) (xxiv) of Defence of India Act and rule 75-A of the Defence of India Rules 1939 so far as requisition of land is concerned were held to be *ultra vires* the Central Legislature in the absence of a notification by the Governor-General empowering the legislature to so enact, (f), *ibid.* But this defect was removed by a notification No. F. 311-47 C. & J., dated 21-10-1947 whereby the legislatures were empowered to make necessary enactment.

Otherwise ever since the 'proclamation of emergency' on 3rd Sept., 1939, the Central Legislature has had power to legislate on any of the matter set out in the lists in Seventh Schedule of the Constitution Act. No notification under S. 104 (1) of the Government of India Act is required unless any particular item is held not to be included in said schedule. The first item in the Provincial list "Public Order" have a wide meaning and they authorise the Legislature to do such acts as are necessary for the public safety and defence of the country. The requisition of moveable property (e. g., motor car) as comprised in S. (2) (xxiv) of the Defence of India Act are within the powers of the legislature under the heading "Public Order" and so *intra vires*, (i).

(f) *Tan Bug Taim v. Collector of Bombay*, 8 F. L. J. 247 : *Juggilal Kamlayat v. Collector of Bombay*, A. I. R. 1946 B. 280.

(g) *Ldhore Electric Supply Co. Ltd. v. Province of Bengal*, I. L. R. 1943 Lah. 617, (F. B.): 1943 Lah. 41.

(h) *Province of Bengal v. Board of Trustees for the Improvement of Calcutta*, 1946 A. I. R. Cal. 416.

(i) *Jasho Prakash Mitter v. Dy. Comr. of Police*, 8 F. L. J. 217.

Suspension of rights under the Government of India Act 1935 :—Although there is no question of any fundamental rights under the said Act, yet some rights were given in the Act, such as right to compensation etc., as provided in s. 299 etc. These rights were liable to be suspended in case of emergency by Proclamation of Emergency under sections 45, 93 and 102 of the Act, which provide *inter-alia* that whole or part of the said Act may be suspended by the Proclamation. Besides under S. 3 of the D. I. Act 1939 any rule or order made under such rule shall have effect notwithstanding anything inconsistent therewith contained in any other Act.

The Defence of India Act 1939 was promulgated on 30th September, 1939 after Proclamation of Emergency under section 102 (1) of the Government of India Act 1935 and providing for special rules and procedures superseding many other existing laws and procedures.

Purposes of requisition :—Under the D. I. Act 1939, s. 19 provides that where any action taken of the nature described in sub-section (2) of s. 299 of the Government of India Act, 1935, compensation shall be determined in the manner laid down therein.

S. 299 (2) of the Government of India Act 1935, lays down *inter-alia* that neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes, unless the law provides for compensation for the property acquired.

Rule 75A (1) of the D. I. Rules 1939 provides *inter-alia* that if in the opinion of the Central Government or a Provincial Government, it is necessary for (1) securing the defence of British India, (2) public safety, (3) maintenance of public order, or (4) efficient prosecution of war, or (5) for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, movable or immovable etc. Properties used as religious places etc., are exempted.

Sub-clause (2) provides that the Government may acquire the requisitioned property.

But it should be noted that the basic section under which acquisition or requisitions are made under the D. I. Act, 1939, is the section 299 of the Government of India Act, 1935. So all the acquisitions etc., must be for public purposes and which must be clearly stated.

All Government purposes may not be public purposes :—Generally Government represents the public interests but when the Government acquires or requisitions the property of a citizen at any compensation, its interests conflict with that of the citizen whose properties are condemned. To acquire or requisition the property of the citizens at a low or nominal price on any pretext, is a great temptation that may frequently be the cause of abuse of power. Means of escape from paying lawful compensation can not be called a public purpose nor the compensation so paid will be *bona-fide*. That is why the amendments made in section 19 etc., by the Defence of India Ordinance XLV of 1945 seem to of doubtful nature. Very recently the said proviso has been declared by Cal. High Court to be void in *Reajuddin Mondal v. Union of India*, (unreported. F. A. 591 of 1960).

Nature of requisitions and property :—Under rule 75A the Government can requisition and acquire only movable and immovable properties but not

an undertaking like an Electric Supply Co., as a going concern, but it can only control an undertaking for the duration of war and a limited period thereafter under rule 81, (j). The words 'any property movable or immovable' *prima facie* means and covers business and its goodwill. It includes requisition of private motor cars (k). The provision for the residence of the Collector for the "maintaining of supplies and services essential to the life of the community" is valid, (l). Failure to comply with the order of Grain Purchase Officer for requisitioning stocks of paddy is an offence punishable under rule 75A, (m). The expression "purpose of religious worship" must be interpreted as including also ancillary purposes such as maintenance of the family of the shebait and selling part of the produce for acquiring other necessities for the deity, but there being complete dedication of the property to deity, the produce of such property can not be requisitioned, (n). But properties of deity, if found surplus or unnecessary for deity's requirements or actually not used for deity, it can be requisitioned, (n). If a premises is bona-fide used by the owner thereof as the residence of himself and his family, it can not be requisitioned under cl. (a) to proviso to s. 3 of the Requisitioning and Acquisition of Immovable Property Act, 1952, (o). But if the premises is not in actual use by the owner, requisition may intervene but the owner is entitled to a hearing and if this is not done, it will be quashed, (p). A shop can be requisitioned for opening of a Co-operative Store for maintaining supplies, (q).

Rights continued :—It is true that the Defence of India Act, 1939 with its Rules is a temporary enactment, but it can not be said that all rights created under this enactment are necessarily temporary. The right to receive compensation for the acquired property is also a right which could not have been intended to depend on the continuance of the temporary Act. It is well settled that the right of appeal is a vested right and it can be taken away only by express terms or by distinct implication. On the expiry of Defence of India Act the provisions of the Land Acquisition Act relating to appeals become applicable but on the basis of the property being acquired under the D. I. Act and the principles of compensation enacted therein. The right to receive just and fair compensation is a very valuable right which could not have been intended to depend on the continuance of the temporary Act. Government has no power during war to take property of a subject without paying compensation, (r).

(j) *Lahore Electric Supply Co. v. The Province of Punjab*, I. L. R. 1943, Lah. 617 : A. I. R. 1943, L. 41 (F. B.).

(k) *Jasho Prokash Mitter v. Dy. Com. of Police*, 8 F. L. J. 217 (1945).

(l) *Kewalram v. Collector of Madras*, I. L. R. 1944, Mad. 826 : A. I. R. 1944 Mad. 285.

(m) *Venkatasubbaier, In re.*, A. I. R. 1945, Mad. 104.

(n) *Nursing Chandra Das v. Emperor*, 24 Pat. 423.

(o) *S. Harnam Singh v. Lt. Governor, Delhi*, A. I. R. 1970, Delhi 66.

(p) *M. N. Gourishankar v. Collector, Madurai*, 1967 (2) M. L. J. 291.

(q) *Prithwi Chand v. State of Punjab*, A. I. R. 1969 Punj., 376 ; *Jute and Gunny Brokers Ltd. v. Union of India*, A. I. R. 1961, S. C. 1214 : 1961 (3) S. C. R. 820.

(r) *Surjon Singh v. The East Punjab Government*, I. L. R. 1957, Punj. 147 : A. I. R. 1957 Punj. 265.

Jurisdiction of the Collector and the Arbitrator under the D. I. Act 1939 :—Before the passing of the D. I. Act & Rules 1962 the Collector had no jurisdiction in case of an acquisition or requisition under the D. I. Act & Rules 1939 to value separate interests but to assess one single amount as compensation. An arbitrator under s. 19 of the D. I. Act, 1939 had also jurisdiction only to determine the amount of compensation but not to apportion the compensation between rival claimants. The position is however different if the owners of different interests agreed before the Collector to apportionment by the Collector and to accept the amounts so fixed. (s). Accordingly Ordinance No. XXII of 1949 was promulgated and after its lapse the Requisitioned Land (Apportionment of Compensation) Act 4 of 1949 and subsequently the D. I. Act and Rules 1962 specially empowered the arbitrator to apportion the amount of compensation. Now the arbitrator's power is unfettered not only to apportionment but also to assess just compensation by allowing all reasonable opportunities to claimants to place all materials before him, (t).

An arbitrator appointed under s. 19 of D. I. Act 1939 can not adjudge a claim for compensation for loss sustained in respect of movable property by acts done under the D. I. Rule 49, (u).

Difference in references under L. A. Act and D. I. Act :—Reference to arbitration made under s. 19 of the D. I. Act 1939, is different in material particulars from a reference to court under s. 18 of the L. A. Act and the functions to be discharged by the arbitrator are not precisely the same as that to be exercised by the court under the L. A. Act. The offer of compensation by the arbitrator is not an award within the meaning of s. 11 of the L. A. Act. It is not conclusive evidence of the area or value of the land. The collector need not specify any particular ground of objection, nor is the jurisdiction of arbitrator confined to a consideration of the ground taken by the complainant. The procedure laid down in Civil Procedure Code is in substance followed. So the offer is not final and it is open to the Government to ask the arbitrator to investigate the matter on further evidence. If a fresh offer is made which is not accepted by the claimant, fresh arbitration must follow, (v). Difference in law in respect of payment of compensation when land is acquired under the L. A. Act and under the D. I. Act, is that, under the L. A. Act the collector makes the award which is of a binding character unless the claimant or the party interested asks for a reference. Whereas in the case of acquisition under s. 19 of D. I. Act, these are negotiations between the collector and the claimant and what the Collector does is to

(s) *Pasupati Ray v. Province of Bengal*, 52 C. W. N. 732.

(t) *Narayani Devi Sureka v. Union of India*, A. I. R. 1969, Cal. 286 ; *Pannalal v. State of Delhi*, A. I. R. 1954, Punj. 251 ; *Sudhindra Nath v. Sailendra Nath*, A. I. R. 1952 Cal. 65.

(u) *Keshab Chandra Pal v. Governor-General of India*, I. L. R. (1945) 2 Cal. 35 : 49 C. W. N. 218 : A. I. R. 1945 Cal. 294.

(v) *Kewalram v. Collector, Madras*, (1944) 1 M. L. J. 263 ; *Ram Brich Singh v. The Province of Bengal*, I. L. R. (1946) 1 Cal. 485 : 50 C. W. N. 481 : A. I. R. 1946 Cal. 319.

make an offer which is not binding unless the claimant accepts the same and finality is reached, (w).

Delegation :—When the power to requisition property has been delegated under rule 75A of D. I. Rule, it is the responsibility of the person in whose favour the delegation is made, to form the final opinion before he can exercise the power as also to acquisition or requisition. It can not be re-delegated to any other officer although the latter officer is invested with all the powers of delegated authority, (x). When a District Magistrate has been empowered by a notification under s. 40 to requisition a property under s. 19, an Additional District Magistrate, though invested with powers of District Magistrate under s. 10 (2), Cr. P. C., can not requisition the property, (y).

Requisition of lease-hold property :—A tenancy from month to month vested in a tenant is not divested on the making of a requisitioning order under Rule 75A of the D. I. Rules. It can not be said that by service of such an order on the tenant the sub-strature of the tenancy is gone or that the estate of the tenant is destroyed. The tenant still continues to be the tenant of the lessor in spite of the requisitioning order which is essentially of a temporary nature, and on the Government de-requisitioning the property, the tenant and not the landlord is entitled to possession, (z).

Monthly compensation is not rent :—When a premises is acquisitioned or requisitioned, the monthly compensation paid therefor is not rent as it is not preceded by a grant by the owner to establish relationship of landlord and tenant, (a).

Disposal :—Disposal within R. 75-A of the D. I. Rules, does not mean any actual removal or delivery by actual movement of the goods. The receipt of a delivery order by the purchaser and payment of money by the purchaser to the vendor's agent, will certainly amount to a disposal of the goods. If the intention of the parties was that the property in the goods should pass with the delivery order, the subsequent acceptance of money by the vendor's agent is another act of disposal. as actual delivery of the goods by him would be, if he allows the purchaser to remove the goods, (b).

Assessment of compensation under a requisition under Rule 75-A :—The real question for consideration in assessing compensation in a case of requisition of land is what was the amount of rent at which the land could be let out by the owner acting at his own will and without compulsion. The calculation of rent on the basis of first finding out the market value of the property may not be proper in all cases. It might afford a good guide where the property is situated in a very important part of the town or is otherwise a trade centre, but the same criterion cannot hold good in the case of land

(w) *Province of Bengal v. Raja of Jhargram*, A. I. R. 1955 Cal. 392 : 60 C. W. N. 185 ; *Union of India v. Nirode Kanta Sen*, 75 C. W. N. 880.

(x) *H. C. Gupta v. Mackertich John*, 49 C. W. N. 583 : A. I. R. 1946 Cal. 140.

(y) *Hari Chand Agarwal v. The Batala Engineering Co. Ltd.*, A. I. R. 1969 S. C. 483.

(z) *Bai Tarabai v. Lala Padam Chand*, 5 Bom. L. R. 797.

(a) *Corporation of Calcutta v. Howrah Motor Co. Ltd.*, I. L. R. 1970 (1) Cal. 525 ; *Corporation of Calcutta v. Shaw Wallace & Co.*, 46 C. W. N. 978.

(b) *Supdt. & Remembrancer of Bengal v. D. B. Futnani*, 79 C. L. J. 189 : A. I. R. 1945, Cal. 402.

which might be lying at a little distance from the *abadi* and was not built upon or could not be easily built upon for some years to come, (c). Sub-rule (4) of R. 75-A of the D. I. Rules expressly provides that compensation has to be given in the case of requisitions, the measure of compensation is not indicated in that sub-rule but that is to be found in s. 19 of the D. I. Act and a corporation is entitled to compensation on acquisition of a public park which is vested in corporation, (d).

The true test of valuation is not what the owner was doing with it at the time of requisition but what he could have done at the time if he so wished or in other words what rights he had then. The general principle is that the value of the land should be calculated with reference to the most lucrative and advantageous way in which the land might be used. If there is an acquisition after requisition, the compensation must be calculated as on the date of acquisition. If a park owned by Board of Trustees for the Improvement, is requisitioned, the Board is entitled to get compensation on the same basis as building sites, (d). Ordinarily in case of requisition, a fair rental value of the premises should be assessed and on de-requisition all losses and damages such as the land made unfit for original purpose for which land was used and to make it fit for that purpose, and various costs as envisaged in s. 23 of the L. A. Act should be paid, calculating on the basis of market value prevailing on the date of requisition. But on subsequent acquisition thereof the compensation was generally paid as it should be paid, on the basis of fair value prevailing on the date of acquisition, with one exception, namely, the Defence of India (Fourth Amendment) Ordinance No. XLV of 1945 coming into force on 11-12-45 and which amended the D. I. Act 1939 by adding a proviso to cl. (e) of s. 19 and by adding sections 19A and 19B. The proviso to cl. (e) of s. 19 provided that in case of acquisition of a requisitioned property, the compensation was to be paid on the basis of value prevailing on the date of requisition and *not* on the date of acquisition. This is of doubtful validity. Subsequently this view is confirmed and the said proviso is declared void by Calcutta High Court on 22.7.71 in *Reajuddin Mondal v. Union of India* (unreported), (d¹). (See notes under Chapter V of this Part).

Statutory allowance :—The solatium or the statutory allowance of 15 per cent as given under the L. A. Act, S. 23, sub-sec. (2) is not available, as it has not been made applicable, (e).

When two modes of valuations are laid down but no freedom is given to the Arbitrator to accept the one he thinks best, the provision is *ultra vires*, (f). An arbitrator is not bound to fix the compensation at the rate at which the premises requisitioned bore at the time of requisition but at the same time he

(c) *Aftab Rai v. Collector of Lahore*, A. I. R. 1948, Lah. 203.

(d) *Province of Bengal v. Board of Trustees*, 50 C. W. N. 825 : A. I. R. 1946 Cal. 416 ; *Union of India v. Nirode Kanta Sen*, 75 C. W. N. 880.

(d¹) *Reajuddin Mondal v. Union of India*, (F.A. 591 of 1960 ; Dated 22.7.71 : unreported) (D.B.).

(e) *Province of Bengal v. Board of Trustees*, 50 C. W. N. 825 : A. I. R. 1946, Cal. 416.

(f) *Union of India v. Kamala Bai Harjivandas Parekh*, 1968 (1) S. C. J. 16 : A. I. R. 1968, S. C. 377.

shall have regard to the same and can look up into other similar premises in the neighbourhood, (g).

Terminal compensation :—This is the compensation that is awarded all at once on acquisition and in case of requisition, on properties which have been destroyed and irretrievably lost to the owners. If at the time of de-requisition it is found that there had been damages inflicted during the period of requisition and the property returned is not in the same condition as it was when requisitioned, Government is liable for what is known as terminal compensation. This is distinguished from properties which are not totally lost and for which recurring compensation for loss of income per year is awarded. When properties are lost, doctrine of replacement can not be attracted to them. Sub-rule (4) of rule 75A of the D. I. Act 1939 provide for payment of compensation for movable property requisitioned or acquired in pursuance of sub-rule 1 or sub-rule 2. If only immovable properties are requisitioned by an order, sub-rule 4 does not apply. But under para. (1) of cl. (6) of section 8 of Act 30 of 1952 claimants are entitled to compensation for loss of all those movable properties on the basis of market value as at the date of requisition, (h).

The right to terminal compensation on the date of de-requisition, was an accrued right and although it would be enough if the claimant was owner of the property at the time when the damage was done, it was certainly not necessary that he should continue to be the owner, even after de-requisition. High Court *suo motu* exercised its powers under Art. 227 of the Constitution, (i).

Compensation for destruction of trees, forests and cultivable lands :—The correct basis for assessing fair compensation for trees felled and destroyed in the land requisitioned e. g., Sal forests etc., would undoubtedly be the rental basis of the sal forest. Compensation must be tested not by what the owner had actually done but what he could have done. The basis of assessing fair compensation for cultivable lands should also be on rental basis, (h), *ibid*.

When purpose of requisition ceased to exist :—The State Government though delegated with power under s. 17 of the Requisitioning and Acquisition of Immovable Property Act XXX of 1952, which continued old requisitions, instead of de-requisitioning the land, acquired it for settlement of displaced persons by notification under sections 4 and 6 of the West Bengal Land Development and Planning Act No. XXI of 1948, such further retention of land is illegal and *mala fide*. Duty under s. 6 of the Act of 1952 of restoring possession, can not be evaded by acquiring same land under another Statute. Contention that the title left in the petitioners after requisition under rule 75A by the Central Government, can be acquired by the State Government, can not be accepted in view of provisions of s. 3 (1) proviso (a) of Act XXI of 1948, (j).

(g) *Sagar Narayan Banerjee v. The State of West Bengal*, 75 C. W. N. 849.

(h) *Union of India v. Nirode Kanta Sen*, 75 C. W. N. 880 (D. B.); *Province of West Bengal v. Raja of Jhargram*, A. I. R. 1955, Cal. 392 ; 60 C. W. N. 185.

(i) *Satyanarain v. Union of India*, A. I. R. 1971 Cal. 167.

(j) *Dhone Gopal v. Secretary, Land Revenue*, A. I. R. 1966, Cal. 348 ; *Union of India v. Ram Kanwar*, A. I. R. 1962 S. C. 247.

A Government can maintain a continuance of the order of requisition in respect of a disputed plot only if and so long as it uses the land for the purpose for which it had been requisitioned but if it is used for some other purpose which is not for "maintenance of supplies and services essential to the life of the community" as understood by Rule 75A of D. I. Rule, there is an end to the legal continuance of requisition and the owner is entitled to get back the land, (k).

Justiciability :—The formation of opinion of the authority concerned as to the necessity or expediency of making a requisition of a property under rule 75A, is clearly a matter of executive discretion and can not be quashed in any court of law. But if such power is exercised in bad faith or for a collateral purpose, it is an abuse of power and not in reality in exercise of power. When the issue of bad faith or collateral purpose is raised, the court is bound to investigate the matter and decide the issue, (l).

Right of suit :—S. 17 (2) of the D. I. Act is clearly a provision for protecting the Government and its instruments from any tortious liability in respect of acts done in good faith in performance of the acts, but it is not the intention of the Act and Rules that the properties of the subjects will be taken away by Government either by acquisition or requisition without paying compensation. If rates have not been prescribed and if Government have failed to take steps for fixation of rates of compensation, then there is nothing in the D. I. Act or Rules which bars the rights of the subject to come to Court for determination of reasonable rates of compensation, (m): If the Government did not choose to appoint an arbitrator or if there is no agreement between the parties and no arbitrator is appointed, a suit is not barred, (n).

Limitation for suit :—Limitation for a suit against the Government under residuary Art, 120 of the Limitation Act is six years from the date of acquisition, (o). But different view is held by Madras High Court, (p).

A writ of certiorari does not lie in respect of an order making a requisition of property under Rule 75A of the D. I. Rules as it is not a judicial order. Such an order is an administrative or ministerial one and if it is illegal a mandatory order under Section 45 of the Specific Relief Act can be granted.

The words "any property movable or immovable" in Rule 75A of the Defence of India Rules must necessarily include all kinds of property except those referred to in the proviso. They *prima facie* cover business and its goodwill. An order requisitioning a commercial undertaking e. g., business of a hotel is not, therefore, *ultra vires* the rule. The provisions of Rule 75A

(k) *Srinarayan Mukherjea v. Collector of Burdwan*, A. I. R. 1969 Cal., 446 : (A. I. R. 1962, S. C. 247 & A. I. R. 1966 Cal. 348 followed).

(l) *Mackertich John v. H. C. Gupta*, 49 C. W. N. 322 : 80 C. L. J. 138 ; *Surjon Singh v. The East Punjab Government*, I. L. R. 1957, Punj. 147 ; A. I. R. 1957, Punj. 265.

(m) *Union of India v. The East Bengal River Steamer Service Ltd.*, A. I. R. 1964 Cal. 196 (D. B.).

(n) *Karnaphuli Jute Mill v. Union of India*, A. I. R. 1956 Cal. 71.

(o) *State of West Bengal v. Brindaban*, 61 C. W. N. 27 ; *Purendu Dhar v. Union of India*, A. I. R. 1956 Cal. 66.

(p) *Sundareswar v. Madras State*, A. I. R. 1958, Mad. 230,

are not in conflict with but are pursuant to s. 299 (2) of the Government of India Act.

Appeal :—*Whether the High Court is a 'Court' under section 19 of the D. I. Act—whether Civil Procedure Code is applicable—whether a cross-objection in the appeal is maintainable—whether a commission for local inspection under O. 26 C. P. C. is legal.*—In *Collector, Varanasi v. Gouri Shankar Misra (q)*, the Supreme Court held that the view of the same court in the previous decision viz., *Hans Kumar Kishan Chand v. The Union of India (r)*, to the effect that a decision of the High Court was not a judgment, or decree or final order and that the provisions for appeal to the High Court under s. 19 (1). (f) of the D. I. Act 1939 can only be construed as reference to it as an authority designated and not as a court, are not correct. In *Union of India v. Nirode Kanta Sen (g)*, it has been held that the High Court in appeal is a down 'court' within the meaning of C. P. Code and that the procedures laid in C. P. Code will apply unless otherwise stated. The result is that a cross-objection is maintainable and the appointment of a Commissioner for local inspection is valid under O. 26 of C. P. C.

Limitation for appeal :—No bar of limitation is applicable to an appeal against the award of compensation by an arbitrator under s. 19 of D. I. Act 1939 for compulsory acquisition of property, (s).

Court-fee in appeal :—In *Hirji Virji Jangbari v. Government of Bombay (t)*, it was held that the court-fee leviable on a memorandum of appeal against an award made by an arbitrator under section 19 (1) (b) of D. I. Act, 1939 for compulsory acquisition of land under Rule 75A, D. I. Rules 1939, is a fixed fee prescribed by schedule II, Art. 11 and not *ad valorem* fee under section 8 of Court Fees Act. Such an award is not an order within meaning of section 8 C. F. Act. Whereas in *Sohonlal Bahety v. Province of Bengal (u)*, it has been held by the Calcutta High Court that "any Act which authorises the acquisition of land for public purposes and provides the machinery for assessment and payment of compensation is an Act for the acquisition of land for public purposes within the meaning of section 8 of the Court Fees Act even if the greater part of its provisions deal with other objects. The fact that the other provisions of the same Act deal with other subjects does not alter the nature of the provisions dealing with such acquisitions. The memorandum of appeal from an award made by an arbitrator under the provisions of section 19 of the Defence of India Act is governed by section 8 of the Court-Fees Act. In an appeal against such an award court-fee under Schedule 1 article 1 of the Act is payable on the difference of the amount awarded by the arbitrator and that claimed by the appellants."

(q) *Collector, Varanasi v. Gouri Shankar Mishra*, A. I. R. 1968, S. C. 394 ; *Union of India v. Nirode Kanta Sen*, 75 C. W. N. 880.

(r) *Hans Kumar Kishan Chand v. The Union of India*, A. I. R. 1958, S. C. 947 : 1959, S. C. R. 117.

(g) *Kollegal Silk Filatures Ltd. v. Province of Madras*, I. L. R. 1948, Mad. 490 : A. I. R. 1949, Mad. 39.

(t) *Hirji Virji Jangbari v. Govt. of Bombay*, 47 Bom. L. R. 327 : A. I. R. 1945, Bom. 348.

(u) *Sohonlal Bahety v. Province of Bengal*, 50 C. W. N. 820 : A. I. R. 1946, Cal. 524.

Recently the Delhi High Court's Division Bench followed the Jangbari Case and held that an award under the Re-Settlement of Displaced Persons (L. A.) Act 1948 is neither a decree nor an order and payment of *ad valorem* Court fee under S. 8 of C. F. Act cannot be insisted upon. This is also applicable under the D. I. Act, (v).

The effect of clause (f) of Section 19 of the D. I. Act 1939, is that an appeal shall not lie to the High Court whenever an award, the amount adjudged by it does not exceed the sum of Rs. 5,000/-, (w).

Interest :—There is no provision for the award of interest in section 23 of L. A. Act of which the sub-sec. (1) only is made applicable to D. I. Act 1939 by Section 19 (1). But payment of interest under the L. A. Act is mandatorily provided in S. 34 although technically interest is no part of the award, (x). At first in *Associated Oil Mills' case* (y), it was held that no interest is payable under the D. I. Act. But Calcutta High Court held in *Roufunnessa Bibi v. Union of India*, (z), "that in land requisition proceedings, under Sec. 19 (1) (f) of D. I. Act and Rules, interest should be made payable on the entire amount, awarded by the arbitrator as compensation for the property acquired, from the date of the Collector's taking of possession of the same and the date of withdrawal, if any, of any part of the said compensation by the referring claimant and further interest at the same rate should be directed on the balance of the final award by the arbitrator until payment or deposit of the same by the Government." An application under Art. 227 of the Constitution is maintainable even when an appeal lies from the award of the arbitrator under Section 19 (1) (f) of the D. I. Act and Rules framed there-under. The contention that no interest should have been awarded at all on the authority of the decision of the Supreme Court in *Mahabir Prasad Rungta v. Durga Dutta* (a), is not acceptable, in as much as, even upon that decision in the light of earlier decision of the same court in *Satinder Singh v. Umrao Singh* (b), interest would clearly be payable. It has further been held that interest can be allowed on equitable grounds as there is no bar for the arbitrator to do so, (c). This is also held in an Andhra Pradesh decision, (d). But recently in *Union of India v. Nirode Kanta Sen* (e), it has been held by Calcutta High Court that the arbitrator under the D. I. Act need only 'to have regard' to the provisions of s. 23 (1) of the L. A. Act and is not directly bound by terms of that section and power has been given

(v) *Mangal Sen v. Union of India*, A. I. R. 1970, Delhi 44.

(w) *Abdul Salem Saheb v. Provincial Govt. of Madras*, 1947 M. W. N. 701 : 1947 (2) M. L. J. 480.

(x) *Jute and Gumy Brokers Ltd. v. Union of India*, A. I. R. 1961 S. C. 1214 ; *Prithwi Chand v. State of Punjab*, A. I. R. 1969, Punj 376.

(y) *Associated Oil Mills v. Government of Madras*, I. L. R. 1948, Madras 567 : A. I. R. 1948, Mad. 256.

(z) *Roufunnessa Bibi v. Union of India*, 65 C. W. N. 412.

(a) *Mahabir Prasad Rungta v. Durga Dutta*, A. I. R. 1961 S. C. 990.

(b) *Satinder Singh v. Umrao Singh*, A. I. R. 1961, S. C. 908.

(c) *Province of Bengal v. Prawn Kissen Law*, 54, C. W. N. 801 ; A. I. R. 1950 Cal. 498 ; *Bolai Lal Pal v. State of West Bengal*, 70 C. W. N. 363.

(d) *K. A. Swamy v. Special Tehsildar*, A. I. R. 1970, Andh. Pra. 139 (F. B.).

(e) *Union of India v. Nirode Kanta Sen*, 75 C. W. N. 880.

to court to award interest not on the whole amount of compensation but only on the difference between the Collector's award and compensation fixed in reference, in a case under the Requisitioning and Acquisition of Immovable Property Act 30 of 1952. The soundness of the view that the arbitrator is at liberty to ignore s. 23 (1) of the L. A. Act, is doubted.

Statutory allowance :—The statutory allowance of 15 P. C. as provided in sub-section (2) of section 23 has not been made applicable by S. 19 of the D. I. Act so no solatium is payable under the D. I. Act.

Notice of requisition and natural justice :—It has been held in *Mihir Kumar Sarkar v. State of West Bengal* (f), that absence of provision in the Act (in the case of West Bengal Land Requisitioning and Acquisition Act II of 1948) for a prior notice of acquisition or requisition, is not a violation of natural justice. The inequality of procedures can be challenged under Art. 14 of the Constitution. But it has been held otherwise in well known cases, (g). But conditions laid down for service of notice must be strictly complied with, (h).

'Existing Law' meaning of and void statutes :—A valid law that existed at the date of the Constitution is known as 'the existing law' which can not be attacked on ground violation of any rights known as the fundamental rights under Part III of the Constitution. In *Mangal Sen v. Union of India*, (i). Delhi High Court at first held that The Re-settlement of Displaced Persons (L. A.) Act 1948 which provided *inter-alia* that compensation has to be determined on basis of market value prevailing on 1-9-39 etc., a long prior date, and which has already been declared void *ab-initio* is not an 'existing law' within the meaning of Art. 366 (10) of the Constitution. The inclusion of this Act in the 9th Schedule of the Constitution also can not save it. Although this seems to be the sound view but it is to be noted that in this case *Dhiruba's* case and *Brijendra Singh's* case, (j). have not been considered. Again the same High Court in a later case, in Full Bench in *P. L. Mehra v. D. R. Khanna* (k), held that although an Act is void but it still remained in the Statute Book though unenforceable and that its defects can be removed by amendment or repeal and that it can be validated by its inclusion in the 9th Schedule of the Constitution. While it can be understood that a law declared void partly or wholly, can again be made enforceable by removing the defects or the vices, when it becomes a new law but it is difficult to understand how a so called Statute Book can be given a legal status, which is nothing but a catalogue or list of statutes maintained for administrative purposes and how a void law can be acted upon by the Government or anybody else so as to include it in the 9th Schedule of the Constitution and making the dead law walk upon its feet alive, in the line of

(f) *Mihir Kumar Sarkar v. State of West Bengal*, 75 C. W. N. 831 (D. B.).

(g) *Duryappa v. Fernando*, (1967) 2 All. E. R. 152 : *State of M. P. v. Champalal*, 1962 S. C. A. 59 ; *Jagannath v. State of Orissa*, 1954, S. C. R. 1046.

(h) *Jhansi Electric Supply v. District Magistrate*, A. I. R. 1968, All. 135.

(i) *Mangal Sen v. Union of India*, A. I. R. 1970, Delhi 44 (D. B.).

(j) *Dhiruba v. State of Bombay*, A. I. R. 1955, S. C. 47 : 1955, S. C. R. 691 : 57 B. L. R. 718 ; *State of U. P. v. Brijendra Singh*, (1961) 1 S. C. R. 362.

(k) *P. L. Mehra v. D. R. Khanna*, A. I. R. 1971, Delhi 1 (F. B.).

Dhiruba's case and Brijendra Singh's case. The correctness of these decisions are open to question. Amending the void portions of an Act by removing the vices, is not the same thing as acting on it, as, it then becomes a new piece of legislation altogether.

Principle of Reinstatement :—When the land is used for some particular purpose not of a commercial nature, such as for a public park or for a church or a school, it is very difficult to estimate the loss. One method adopted is that known as reinstatement, by which is meant that the amount of compensation to be awarded shall be assessed according to the cost acquiring an equally convenient site and erecting an equally convenient premises. (Halsbury, Vol. VI, p. 45). There are some cases in which the income derived or probably to be derived from land would not constitute a fair basis in assessing the value to the owner and then the principle of reinstatement should be applied. "This principle is that the owner can not be placed in as favourable position as he was in before by the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or the lands which would be to him of the same value. It is not possible to give an exhaustive catalogue of all the cases to which the principle of reinstatement is applicable. But we may instance Churches, Schools, Hospitals, houses of exceptional character and business premises in which the business can only be carried on under special conditions or by means of special licenses." (Cripps on Compensation, 9th Edn. p. 502). There is no occasion for applying the principle of reinstatement in a case on a problematical calculation of estimated loss for a quarter or a fifth of a century and in attempting to provide for reinstatement where such reinstatement is either not feasible or there may be reasonable doubt whether it is practical or not to provide for reinstatement, (l). In such circumstances the claimant is entitled to the fair income which would have accrued by him during the period when the property was under acquisition, and he was also entitled to the damages which had been inflicted during the period of requisition, (m).

(l) *Province of West Bengal v. Raja of Jhargram*, 60 C. W. N. 185 (D. B.).
(m) *Union of India v. Nirode Kanta Sen*, 75 C. W. N. 880 (D. B.).

PART II

CHAPTER V

THE DEFENCE OF INDIA (FOURTH AMENDMENT) ORDINANCE

No. XLV of 1945

(Published in the Gazette of India, Extraordinary, dated the 11th December, 1945)

Whereas an emergency has arisen which makes it necessary further to amend the Defence of India Act, 1939 (XXXV of 1939), for the purposes hereinafter appearing.

Now Therefore, in exercise of the powers conferred by section 72 of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance :—

1. **Short title and commencement** :—(1) This Ordinance may be called the Defence of India (Fourth Amendment) Ordinance, 1945, (2) It shall come into force at once.

2. **Amendment of Section 19, Act XXXV of 1939** :—In Sub-section (1) of section 19 of the Defence of India Act, 1939 (hereinafter referred to as the said Act),—

(a) after the word “where” where it occurs for the first time, the words, figures and letter “under section 19A or” shall be inserted.

(b) to clause (e) the following proviso shall be added, namely :—

“Provided that where any property requisitioned under any rule made under this Act is subsequently acquired under section 19A or any such rule, the arbitrator in any matter in connection with such acquisition shall, for the purposes of the provisions of the said section 23, take into consideration the market value of the property at the date of its requisition as aforesaid and not at the date of its subsequent acquisition.”

3. **Insertion of new sections 19A and 19B in Act XXXV of 1939** :—After section 19 of the said Act the following sections shall be inserted namely :—

“19A. **Power to acquire requisitioned property.**—

(1) Without prejudice to any power to acquire conferred by any rule made under this Act, any immovable property which has been requisitioned under any rule so made may, in the manner provided by any such rules for the acquisition of property, be acquired in the circumstances and by the Government hereinafter specified, namely,—

(a) Where any works have, during the period of requisition, been constructed on, in or over the property wholly or partly at the expense of any Government, by that Government if it decides that the value of, or the right to use, such works shall, by means of the acquisition of property, be preserved or secured for the purposes of any Government, or

(b) Where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at that time, by that Government,— and at the beginning of the day on which notice of such acquisition is served or published under the aforesaid rules, the immovable property shall vest in the acquiring Government free from any mortgage, pledge, lien or similar encumbrance, and the period of the requisition thereof shall end.

(2) Any decision or determination of a Government under sub-section (1) shall be final, and shall not be called in question in any court.

(3) For the purposes of this section, "works" includes buildings, structures and improvements of the property, of every description."

19B. Release from requisition :—(1) Where any property requisitioned under any rule made under this Act is to be released from such requisition, the Government by which or under whose authority the property was requisitioned or any person generally or specially authorised by it in this behalf may, after such enquiry, if any, as it or he may in any case consider it necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given.

(2) The delivery of possession of the property to the person specified in an order under sub-section (1) shall be a full discharge of the Government from all liabilities in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is given.

4. Declaration as to application to pending proceedings :—For the avoidance of doubts it is hereby declared that the provisions of section 19 of the said Act as amended by clause (b) of section 2 of this Ordinance shall apply to proceedings before an arbitrator under the said section 19 pending on the date of the commencement of this Ordinance, but such amendment shall not affect any case in which the arbitrator has before the said date made his award under that section, or operate to review or reopen any case in which, before the said date,—

(i) Compensation has been paid and accepted without protest formally recorded in writing, or

(ii) the amount of compensation payable has been fixed by agreement, whether or not at the said date such amount has been paid.

Amendments

Section 19 after the amendment runs as follows :—

Compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property etc.

19. Where ¹[under section 19A or] by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of

section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say :—

- (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.
- (b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the abovementioned Act for appointment as a judge of the High Court.
- (c) The Central Government may, in any particular case nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.
- (d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation.
- (e) The arbitrator in making his award shall have regard to—
 - (i) the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable ; and
 - (ii) whether the acquisition is of a permanent nature or temporary character.

²[Provided that where any property requisitioned under any rule made under this Act is subsequently acquired under section 19A or any such rule, the arbitrator in any matter in connection with such acquisition shall, for the purpose of the provisions of the said section 23, take into consideration the market value of the property at the date of its requisition as aforesaid and not at the date of its subsequent acquisition.]

- (f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.
- (g) Save as provided in this section and in any rule made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.
- (2) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.
- (3) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—
 - (a) the procedures to be followed in arbitrations under this section ;
 - (b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal ;
 - (c) the maximum amount of an award against which no appeal shall lie.

Notes

The Defence of India Act No. 35 of 1939 was enforced on 3rd September, 1939 and expired on 1st October, 1946. It was thereafter continued by Ordinance XII of 1946 that came into force on 30-3-46. In the meantime the Ordinance viz., The Defence of India (Fourth Amendment) Ordinance No. XLV of 1945 was enforced on 11th December, 1945 amending the D. I. Act 1939 by inserting two new sections viz., 19A and 19B and a proviso to cl. (e) of s. 19. These amendments are cumbersome and peculiar. The proviso to cl. (e) of s. 19 provides in effect that on acquisition of a requisitioned property, compensation is to be paid on the basis of market value of the property at the date of its requisition and *not* at the date of its subsequent acquisition.

It may be seen that both the clauses (a) and (b) of s. 19A are neither public purposes in themselves within the meaning of s. 299 of the Government of India Act 1935, nor military purposes under the D. I. Act. The words "be preserved or secured for the purposes of any Government" is too vague to specify any public purpose. There is no mention of the word 'Public purpose' in s. 19A as provided in s. 299 of the Government of India Act 1935. All Government purposes may not be public purposes. So any notification simply on this basis without specifying clearly the public purpose for which the property is acquired, will be *ultra vires* even if this particular section may be held *intra-vires*.

Clause (b) of s. 19A in effect, is an escape for the Government from paying a market value, probably high, at the date of acquisition, by depriving the owner of his lawful dues. This is of doubtful validity.

This Ordinance applies only to proceedings before an arbitrator pending at the date of its commencement i. e., 11th December, 1945 but shall not affect an award already made or compensation paid, fixed or agreed before the said date, (s. 4). All these amendments are contrary to the so called fundamental rights as envisaged in the basic section viz., s. 299 of the Government of India Act 1935. There is no reason why the principles of *Bela Banerji's case* (a) and *N. B. Jeejeebhoy's case* (b) or *Kamalabai Harjivandas's case*, (b¹) will not apply to proviso of s. 19 (1) (e). It has been held in *Shantilal's Case* (c) that the principles laid down in *Bela Banerji's case* is still applicable to all relevant statutes enacted prior to the 4th Amendment of the Constitution i.e., 27-4-1955. Recently this view is confirmed in as much as, the proviso to cl. (e) of 19 (1) is declared void by Calcutta High Court in *Reajuddin Mondal v. Union of India*, (b²).

After the coming into effect of the Constitution of India on 26-1-50, it has been held by the Supreme Court in pending proceedings that by pro-

(a) *State of West Bengal v. Bela Banerji*, A. I. R. 1954, S. C. 170.

(b) *N. B. Jeejeebhoy v. Asst. Collector, Thana Prant*. A. I. R. 1961 S. C. 1096 : 67 B. L. R. 575.

(b¹) *Union of India v. Kamalabai Harjivandas Parekh*, A. I. R. 1968 S. C. 377.

(b²) *Reajuddin Mondal & Ors. v. Union of India* (Unreported. F. A. 591 of 1960).

(c) *State of Gujarat v. Shantilal Mangaldas*, A. I. R. 1969, S. C. 634.

clamation of emergency the Fundamental Rights under Part III of the Constitution can be suspended and in many cases have been suspended and so the rights given under s. 299 of the Government of India Act 1935 should be deemed to be such fundamental rights under the Constitution and that such Act shall not be void on the ground that it violated s. 299 of the Govt. of India Act 1935, (d). But with respect, it seems, that it is going too far and so of doubtful accuracy. In *Mangal Sen v. Union of India* (e), in connection with Re-Settlement of Displaced Persons (Land Acquisition) Act 1948, it has been held "that the Act being void under s. 299 of the Government of India Act 1935, was void *ab-initio* and since they are therefore to be ignored, they are not 'existing law' within meaning of Art. 356 (10) of the Constitution and not being 'existing law' they are not saved by Art. 31 (5) or 31A or 31B the attack is exclusively on that ground" completely by-passing the Supreme Court in *Dhiruba's* case. A later decision of the Full Bench of Delhi High Court in *P. L. Mehra v. D. R. Khanna* (f), held that a void statute may be still an 'existing law' because of its existence in the Statute Book but it is un-enforceable by anyone and that it can again be made enforceable after removing the vices by amending it. Although it is suggested that a void law can be revived by its inclusion in the 9th Schedule of the Constitution but it can not be understood, how, if the void Act or a void portion of it can not be acted upon by anybody, can the Government act upon it and include it as it is, in the 9th Schedule ?

Another feature is that there is no provision of any prior notice of acquisition.

Further it is notable that all requisitions and acquisitions that were made under the D. I. Act 1939 and kept pending without there being any award or agreement till 24-3-47 when the Requisitioned Land (Continuance of Powers) Act XVII of 1947 came into force, the law applicable is the Act of 1947 and not this Ordinance of 1945. Again if these requisitions or acquisitions were still pending up to 14-3-1952, the law applicable is the Requisitioning and Acquisition of Immovable Property Act No. 30 of 1952 that came into force on said date and amendments made by the Ordinance XLV of 1945 will have no effect unless the award is made before 1st October, 1946. (See notes under Act XVII of 1947. Chapter X of this Part).

(d) *Dhiruba v. State of Bombay*, A. I. R. 1965 S. C. 471 : 1965, S. C. R. 691 and *State of U. P. v. Brijendra Singh*, (1961) 1 S. C. R. 362.

(e) *Mangal Sen v. Union of India*, A. I. R. 1970, Delhi 44.

(f) *P. L. Mehra v. D. R. Khanna*, A. I. R. 1970, Delhi 1 (F. B.).

PART II

CHAPTER VI

DEFENCE OF INDIA (SECOND AMENDMENT) ORDINANCE

No. XII of 1946

(Published in Gazette of India Ext. dated 30th March 1946)

1. **Short title, extent and commencement :—**(1) This Ordinance may be called the Defence of India (Second Amendment) Ordinance 1946.

(2) It shall come into force at once.

2. **Amendment of Section 1, Act XXXV of 1939 :—**To sub-section (4) of section 1 of the Defence of India Act, 1939, the following shall be added, namely :—

“but its expiry under the operation of this sub-section shall not affect—

- (a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made there-under or any order made any such rule, or
- (c) any penalty, forfeiture or punishment incurred in respect of any contravention of any rule made under this Act or any order made under any such rule, or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.”

Notes

The effect of this Ordinance is that when the Defence of India Act 1939 expires on 30th September, 1946, such expiry shall not effect any act or things already done, any rights accrued etc., under the Act of 1939.

PART II

CHAPTER VII

THE REPEALING ORDINANCE NO. 1 OF 1946

(Published in Gazette of India, Ext., dated 5th January, 1946)

(Summary)

Section 1,—It comes into force at once i. e., 5th Jany., 1946.

Section 2,—The Ordinances specified in the Schedule below are hereby repealed :—

SCHEDULE (all items not mentioned)

The Defence of India (Amendment) Ordinance No. XXIII of 1942.

The Defence of India (Second Amendment) Ordinance No. XLVIII of 1942.

The Defence of India (Amendment) Ordinance No. XIV of 1943.

The Defence of India (Second Amendment) Ordinance No. XLIV of 1943.

The Defence of India (Amendment) Ordinance No. XXVI of 1944.

Section 3,—The repeal by this Ordinance of other Ordinances as shown above shall not affect the previous operations of any Ordinance or anything under them, any rights already acquired etc., nor shall it revive or restore anything not in force at the commencement of this Ordinance etc.

The Defence of India (Amendment) Ordinance No. XIV of 1943 repealed by this Repealing Ordinance and the Defence of India (Second Amendment) Ordinance No. XXXV of 1944 have no connection with acquisition or requisition.

PART II

CHAPTER VIII

THE REQUISITIONED LAND (CONTINUANCE OF POWERS) ORDINANCE NO. XIX OF 1946

(Published in the Gazette of India, Ext., dated 25th Sept., 1946)

WHEREAS an emergency has arisen which makes it necessary to provide, in relation to land which, when the Defence of India Act, 1939 (XXXV of 1939), expires, is subject to any requisition effected under rules made under that Act, for the continuance of certain powers theretofore exercisable under the said Act or the said rules ;

AND WHEREAS the Indian Legislature has been empowered by section 3 of the India (Central Government and Legislature) Act, 1946 (9 & 10 Geo. 6, c. 39), to make laws with respect to the matter aforesaid ;

AND WHEREAS the Indian Legislature is not in session,

NOW THEREFORE, in exercise of the power conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c. 2) the Governor-General is pleased to make and promulgate the following Ordinance :—

1. **Short title, extent and commencement :—**(1) This Ordinance may be called the Requisitioned Land (Continuance of Powers) Ordinance, 1946.
(2) It extends to the whole of British India.

(3) It shall come into force on the first day of October, 1946.

2. **Definitions :—**In this Ordinance, unless there is anything repugnant in the subject or context,—

(1) “appropriate Government” means, in relation to any requisitioned land, the Central or Provincial Government by which or under the authority of which the land has been requisitioned.

(2) “Provincial Government” means in relation to, a Chief Commissioner’s Province, the Chief Commissioner.

(3) “requisitioned land” means immovable property which, when the Defence of India Act, 1939 (XXXV of 1939) expires, is subject to any requisition effected under the rules made under that Act.

3. **Continuance of requisitions :—**Notwithstanding the expiration of the Defence of India Act, 1939 (XXXV of 1939) and the rules made thereunder, all requisitioned lands shall continue to be subject to requisition until the expiry of this Ordinance and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient.

Provided that the appropriate Government may at any time release from requisition any requisitioned land.

4. **Release from requisition :—**(1) Where any requisitioned land is to be released from requisition, the appropriate Government may, after making such enquiry, if any, as it considers necessary, specify by order in writing the person to whom possession of the land shall be given.

(2) The delivery of possession of the requisitioned land to the person specified in an order made under sub-section (1) shall be a full discharge of the Government from all liability in respect of such delivery, but shall not prejudice any rights in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person to whom possession of any requisitioned land is to be given cannot be found and has no agent or other person empowered to accept delivery on his behalf, the appropriate Government shall cause a notice declaring that the land is released from requisition to be affixed on some conspicuous part of the land and publish the notice in the official gazette.

(4) When a notice referred to in sub-section (3), is published in the official Gazette, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof ; and the Government

shall not be liable for any compensation or other claim in respect of the land for any period after the said date.

5. Power to acquire requisitioned land :—(1) Subject to the provisions of sub-section (3), the appropriate Government may, at any time when any requisitioned land continues to be subject to requisition under section 3, acquire such land by publishing in the official Gazette a notice to the effect that such Government has decided to acquire such land in pursuance of this section.

(2) When a notice as aforesaid is published in the official Gazette, the requisitioned land shall on and from the beginning of the day on which the notice is so published, vest absolutely in the appropriate Government free from all encumbrances and the period of requisition of such land shall end.

(3) No requisitioned land shall be acquired under this section except in the following circumstances, namely :—

(a) where any works have during the period of requisition been constructed on, in or over the land wholly or partly at the expense of Government and the appropriate Government decides that the value of, or the right to use, such works should be preserved or secured for the purposes of Government ; or

(b) where the cost of restoring the land to its condition at the time of its requisition would, in the determination, of the appropriate Government, be excessive having regard to the value of the land at that time, or

(c) where the appropriate Government decides that such acquisition is necessary for any purpose connected with the maintenance of the defence services or with maintenance of supplies and services essential to the life of the community.

(4) Any decision or determination of the appropriate Government under sub-section (3) shall be final, and shall not be called in question in any Court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvements of every description.

6. Payment of compensation :—Where under this Ordinance any requisitioned land is continued under requisition for a period and is thereafter released from requisition or is acquired, compensation for such continued requisition and, as the case may be, acquisition of the land shall be determined and paid in accordance with the provisions of section 19 of the Defence of India Act (XXXV of 1939), and the rules made thereunder ; and for the purposes of such determination and payment—

(a) the said provisions and rules shall be deemed to be in force subject to the modification that reference therein to section 19-A of the Defence of India Act, 1939 (XXXV of 1939), shall be construed as references to section 5 of this Ordinance ; and

(b) all agreements and awards under section 19 of the Defence of India Act, 1939 (XXXV of 1939), in regard to the payment of compensation for the period of requisition before the commencement of this Ordinance shall continue to be in force and shall apply to the payment of compensation for the period of requisition after the commencement of this Ordinance.

7. **Power to obtain information :—**(1) The appropriate Government may, with a view to carrying out the purposes of sections 3 to 6, by order require any person to furnish to such authority as may be specified in the order such information in his possession relating to any requisitioned land as may be so specified.

(2) If any person fails to furnish any information required by an order under sub-section (1), or furnish any information which is false and which he either knows or has reasonable cause to believe to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

8. **Delegation of functions :—**The Central Government or any Provincial Government may, by order notified in the official Gazette, direct that any power conferred or any duty imposed on it by this Ordinance shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer as may be so specified.

9. **Protection of action taken under this Ordinance :—**(1) No suit, prosecution, or other legal proceeding shall lie against any person for any thing which is in good faith done or intended to be done in pursuance of this Ordinance or any order made thereunder.

(2) Save as otherwise expressly provided under this Ordinance, no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Ordinance or any order thereunder.

Notes

S. 1.—This Ordinance came into force on 1st day of October, 1946.

S. 2 (3).—‘requisitioned land’ means any land already requisitioned and has remained so at the expiry of the Defence of India Act 1939. The D. I. Act was enacted by Proclamation of Emergency on 3rd September, 1939 and it came to end on 1st October, 1946 but actions already taken were continued by Defence of India (Second Amendment) Ordinance No. XII of 1946 which came into force on 30th March, 1946 and thereafter the D. I. Act and Rules so far as requisitions and acquisitions under s. 19 and Rule 75A are concerned were continued by the present Ordinance i. e., Requisitioned Land (Continuance of Powers) Ordinance No. XIX of 1946 which came into force on 1st October, 1946 i.e., immediately after the expiry of the D. I. Act 1939.

S. 3.—Lands already requisitioned under D. I. Act 1939 were continued to remain so until the expiry of this Ordinance.

It may be noted that this Ordinance was published on 25th September, 1946 to be in force from 1st October, 1946, but on the same date the Emergency Provisions (Continuance) Ordinance No. XX of 1946 was promulgated which also came into force on 1st October, 1946 providing *inter-alia* in section 2 that “provisions of the Defence of India Rules mentioned in the first column of the Schedule to that Ordinance shall continue in force and have effect subject to the modifications specified in the second column thereof”, or, in other words, provisions of D. I. Rules that are not

included in the said schedule have no longer any force or, in other words, in short, Rule 75-A amongst others which was not included in the said schedule, was discontinued along with the D. I. Act 1939.

But it should be remembered that requisitions etc., made under the D. I. Act and Rules 1939 were continued by the special Act, namely the Requisitioned Land (Continuance of Powers) Ordinance No. XIX of 1946 which was not affected by the Emergency Provisions (Continuance) Ordinance No. XX of 1946 although the D. I. Act 1939 and most of the Rules including R. 75-A were discontinued.

It should also be noted that the Defence of India (Fourth Amendment) Ordinance No. XLV of 1945, coming into force on 11th Dec. 1945 amends the D. I. Act 1939 by addition of new sections 19A and 19B and by addition of words "under section 19A or" after the word "where" where it occurs for the first time in sub-sec. (1) of s. 19 of the D. I. Act and by addition of a proviso to clause (e) of section 19 which provides in effect that a requisitioned property when subsequently acquired, the compensation to be paid on the basis of market value existing on the date of requisition and not on the date of acquisition. These amendments were neither repealed nor excluded. Now the Requisitioned Land (Continuance of Powers) Ordinance by virtue of s. 6 provides that all references to s. 19 in the D. I. Act 1939, should be read as under s. 5 of this Ordinance besides providing that compensation is to be paid in accordance with s. 19 of the D. I. Act 1939 and the rules made thereunder. S. 19 means the section as amended by Ordinance XLV of 1945, in other words continuing the proviso to cl. (e) of s. 19. The effect is that if an acquisition is made after due publication of notice in the Official Gazette as required by sub-section (1) of s. 5 of this Ordinance No. 19 of 1946, then the property vests in the Government free from all encumbrances but the compensation is to be paid as provided in the proviso to cl. (e) of s. 19 of the D. I. Act 1939, as at value prevailing on the date of requisition. Its validity has been doubted and is declared void. (See notes under Ordinance XLV of 1945, *supra*).

Under the Ordinance XLV of 1945 the publication of a notice is not a condition precedent which is remedied in this Ordinance. So excepting the provision for notice and the proviso to cl. (e) of s. 19 the reasonings given under the said Ordinance XLV of 1945 apply also to this Ordinance.

PART II

CHAPTER IX

THE EMERGENCY PROVISIONS (CONTINUANCE) ORDINANCE NO. XX OF 1946

(Published in the Gazette of India Ext., dated 25th Sept., 1946)

(EXTRACTS)

1. **Short title, extent and commencement :—**(1) This Ordinance may be called the Emergency Provisions (Continuance) Ordinance, 1946.

(2) It extends to the whole of British India and it applies also—

(a) to British subjects and servants of the Crown in any part of India.

(b) to British subjects who are domiciled in any part of India wherever they may be ; and

(c) to, and to persons on, ships and aircrafts registered in British India wherever they may be.

3. It shall come into force on the First day of October, 1946.

2. **Continuance of certain emergency provisions :—**(1) Notwithstanding the expiry of the Defence of India Act, 1939 (XXXV of 1939)—

(i) the provisions of the Defence of India Rules mentioned in the First column of the Schedule to this Ordinance shall continue in force and have effect subject to the modifications specified in the second column thereof ;

(ii) any order or other instrument made under or in pursuance of any of the said provisions and in force immediately before the expiry of the Defence of India Act, 1939 (XXXV of 1939), shall continue in force so far as consistent with the provisions as continued in force by this section and be deemed to be made under the provisions so continued in force ;

(iii) the Indian Navy (Discipline) Act, 1934 (XXXIV of 1934) shall continue to have effect as if for section 90 of the Naval Discipline Act as set forth in the first Schedule thereto, the section set forth in clause (d) of sub-section (5) of section 6 of the Defence of India Act, 1939 (XXXV of 1939) had been substituted.

(2) References in sub-section (1) to the Defence of India Rules shall be construed as references to those Rules as in force immediately before the commencement of this Ordinance.

(3) Section 6 of the General Clauses Act 1897 (X of 1897), shall apply upon the expiry of any Defence of India Rule continued in force by this section as if that rule were an enactment and had then been repealed by a Central Act.

3. **Effect of rules etc., inconsistent with other enactments :—**The provisions of the Defence of India Rules as continued in force by section 2 and all orders made or deemed to be made under such provisions shall have effect notwithstanding anything inconsistent therewith contained in any

enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

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|---|---|---|---|
| *4. Delegations. | * | * | * |
| *5. Savings as to orders. | * | * | * |
| *6. Protection of action taken under rules. | | * | * |

Schedule (s. 2)

The following Defence of India Rules were continued in force with modification in most cases—

Rules 1, to 5, Rules 62, 65, 81, 81A, 84, 85A, 88, 90A, 90B, 91, 92, 92A, 92B, 92C, 92D, 93, 94, 94A, 95, 97, 98, 99, 100, 100A, 101A, 103, 104, 105, 106, 108, 110, 111, 113A, 114, 114A, 116, 117, 117A, 118, 119, 121, 122, 123A, 130.

Notes

See notes under Ordinance No. XIX of 1946.

This Ordinance No. XIX of 1946 was repealed by the Requisitioned Land (Continuance of Powers) Act No. XVII of 1947 enforced on 24th March, 1947 and acts done already are continued. (See *supra*).

PART II

CHAPTER X

THE REQUISITIONED LAND (CONTINUANCE OF POWERS) ACT Act No. XVII of 1947

(PASSED BY THE INDIAN LEGISLATURE)

(Received the assent of the Governor-General on the 24th March, 1947)

An Act to provide for the continuance of certain emergency powers in relation to requisitioned land.

WHEREAS it is expedient to provide, in relation to land which, when the Defence of India Act, 1939 expired, was subject to any requisition effected under rules made under that act, for the continuance of certain powers heretofore exercisable under the said Act or the said rules :

AND WHEREAS the Requisitioned Land (Continuance of Powers) Ordinance, 1946, provided for the continuance of such powers, as the Indian Legislature was not in session:

AND WHEREAS the Indian Legislature has been empowered by section 3 of the India (Central Government and Legislature) Act, 1946, to make laws with respect to the matters aforesaid ;

* These paragraphs are not cited here.

It is hereby enacted as follows :—

1. **Short title, extent and duration.**—(1) This Act may be called the Requisitioned Land (Continuance of Powers) Act, 1947.

(2) It extends to the whole of British India.

(3) It shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central Government and Legislature) Act, 1946, except as respects things done or omitted to be done before the expiration thereof, and section 6 of the General Clauses Act 1897, shall apply upon the expiry of this Act as if it had then been repealed by a Central Act.

2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

(1) “appropriate Government” means, in relation to any requisitioned land, the Central or Provincial Government by which or under the authority of which the land has been requisitioned ;

(2) “Ordinance” means the Requisitioned Land (Continuance of Powers) Ordinance, 1946 ;

(3) “Provincial Government” means, in relation to a Chief Commissioner’s Province, the Chief commissioner ;

(4) “requisitioned land” means immovable property which at the commencement of this Act is subject to any requisition effected under the rules made under the Defence of India Act, 1939.

3. **Continuance of requisitions.**—Notwithstanding the expiration of the Defence of India Act, 1939, and the rules made thereunder and the repeal of the Ordinance, all requisitioned lands shall continue to be subject to requisition until the expiry of this Act and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient :

Provided that the appropriate Government may at any time release from requisition any requisitioned land.

Notes :—By this section the operation of requisition made under D. I. Act and Rules 1939 are continued. This Act is an ‘existing law’ and is not hit by Art. 14 of the Constitution, (a).

4. **Release from requisition.**—(1) Where any requisitioned land is to be released from requisition, the appropriate Government may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person to whom possession of the land shall be given.

(2) The delivery of possession of the requisitioned land to the person specified in an order made under sub-section (1) shall be a full discharge of the Government from all liability in respect of such delivery, but shall not prejudice any rights in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person to whom possession of any requisitioned land is to be given cannot be found and has no agent or other person empowered to

accept delivery on his behalf, the appropriate Government shall cause a notice declaring that the land is released from requisition to be affixed on some conspicuous part of the land and publish the notice in the official Gazette.

(4) When a notice referred to in sub-section (3) is published in the official Gazette, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof; and the Government shall not be liable for any compensation or other claim in respect of the land for any period after the said date.

5. **Power to acquire requisitioned land.**—(1) Subject to the provisions of sub-section (3), the appropriate Government may, at any time when any requisitioned land continues to be subject to requisition under section 3, acquire such land by publishing in the official Gazette a notice to the effect that such Government has decided to acquire such land in pursuance of this section.

(2) When a notice as aforesaid is published in the official Gazette, the requisitioned land, shall on and from the beginning of the day on which the notice is so published, vest absolutely in the appropriate Government free from all encumbrances and the period of requisition of such land shall end.

(3) No requisitioned land shall be acquired under this section except in the following circumstances namely :—

(a) where any works have during the period of requisition been constructed on, or over the land wholly or partly at the expense of Government and the appropriate Government decides that the value of, or the right to use, such works should be preserved or secured for the purposes of Government; or

(b) where the cost of restoring the land to its condition at the time of its requisition would, in the determination of the appropriate Government, be excessive having regard to the value of the land at that time and the owner declines to accept the release from requisition of the land without payment of compensation from Government.

(4) Any decision or determination of the appropriate Government under sub-section (3) shall be final, and shall not be called in question in any Court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvements of every description.

6. **Payment of compensation.**—(1) In respect of the continued subjection of requisitioned land to requisition under this Act or the Ordinance, compensation shall be determined and paid in accordance with the provisions of section 19 of the Defence of India Act, 1939, and of the rules made thereunder :

Provided that all agreements and awards made under the said section in respect of the payment of compensation for the period of requisition before the expiry of the said Act, shall continue to be in force and shall apply to the payment of compensation for the period of requisition after such expiry.

(2) In respect of any acquisition of requisitioned land under this Act or the Ordinance, the amount of compensation payable shall be such sum as would be sufficient to purchase at the market rate prevailing on the date of the notice under section 5 a piece of land equal in area to, and situated within a distance of three miles from, the acquired land, and suitable for the same use as that to which the acquired land was being put immediately before the date of its requisition, or a sum equivalent to twice the market value of the acquired land on the date of its requisition, whichever is less; and such amount shall be determined and paid in accordance with the procedure set out in the aforesaid section 19 and the rules made thereunder.

(3) For the purposes of sub-section (1) all the provisions of the aforesaid section 19 and of the rules made thereunder, and for the purposes of sub-section (2) such of those provisions as relate to matters of procedure, shall be deemed to be continuing in force.

7. Power to obtain information.—(1) appropriate Government may, with a view to carrying out the purposes of sections 3 to 6, by order require any person to furnish to such authority as may be specified in the order such information in his possession relating to any requisitioned land as may be specified.

(2) Every person required to furnish such information as is referred to in sub-section (1) shall be deemed to be legally bound to do so within the meaning of sections 176 and 177 of the Indian Penal Code.

8. Delegation of functions.—The Central Government or any Provincial Government may, by order notified in the official Gazette, direct that any power conferred or any duty imposed on it by this Act shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer as may be so specified.

9. Protection of action taken under the Act.—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

(2) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

10. Repeal of Ord. XIX of 1946.—The Requisitioned Land (Continuance of Powers) Ordinance, 1946, is hereby repealed; and anything done in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done in exercise of powers conferred by or under this Act, as if this Act had commenced on that day of October, 1946.

Notes

S. 10 of this Act XVII of 1947 repeals the Requisitioned Land (Continuance of Powers) Ordinance, 1946. The Defence of India Act, 1939, with all its amendments and Rules have expired on 30th September, 1946. This Act came into force on 24th March, 1947. By virtue of section 2 (4) and s. 3 of this Act all lands already requisitioned before 24-3-47 shall continue to be subject to requisition until expiry of this Act. Provision

for prior notice of acquisition is maintained in s. 5. Purposes envisaged in s. 5 sub-clause (c) of the Ordinance XIX of 1946 i. e., purposes connected with the maintenance of defence services or supplies and services essential to the life of the community, is deleted and non-existent in this Act. The result seems to be, as already stated, the purposes given in s. 5 (3) of this Act do not *prima facie* seem to be public purposes and the reasonings given in notes under Ordinance XLV of 1945 apply here also. S. 6 provides that for all requisitions made prior to the commencement of this Act i.e., 24-3-47, provisions of s. 19 (as amended) shall apply, in other words, compensation to be paid on basis of valuation prevailing on the date of requisition and not on the date of acquisition. But this is contradictory to s. 10 of this Act as stated below.

In respect of requisitioned land acquired under this Act i. e., after 24-3-47, special mode of valuation is laid down in s. 6 (2), which is, market value of similar land, prevailing on the date of notice of acquisition or a sum equivalent to twice the market value of the acquired land on the date of this requisition, whichever is less. Thus making the proviso to cl. (e) of s. 19 of the D. I. Act 1939 as also other amendments nugatory. Besides, the proviso to cl. (e) of s. 19 (1) of the Defence of India Act 1939, is declared void in *Reajuddin Mondal v. Union of India* (unreported F. A. 591 of 1960).

Under S. 10 the Ordinance XIX of 1946 is repealed but anything done under the said Ordinance shall be deemed to have been done in exercise of powers conferred by or under this Act as if this Act had commenced on 1st of October 1946. The effect seems to be that for any requisition or acquisition made after the 1st October, 1946, the law applicable is 'this Act' i. e., the Requisitioned Land (Continuance of Powers) Act XVII of 1947, if no award or agreement is already made before the commencement of 'this Act' i. e., on 24-3-47. In other words the proviso to cl. (e) of s. 19 of D. I. Act 1939 and sections 19A and 19B are made nugatory, so far as proceedings that were pending on 24-3-47. Again it is notable that requisition and acquisition proceedings that were pending on 1st October, 1946 were the proceedings that were started under the Defence of India (Fourth Amendment) Ordinance XLV of 1945 which came into force on 11th December, 1945 or pending under it on said date and that these were continued on the said date, at first by Defence of India (Second Amendment) Ordinance XII of 1946 and thereafter by Ordinance No. XIX of 1946 commencing on 1-10-46, Therefore for all requisitions or acquisitions made under the D. I. Act 1939 in which no award or agreement having been made prior to 24-3-47, it is this Act that will apply, or in other words, compensation is to be paid on the basis of market value prevailing on the date of acquisition or twice the value prevailing on the date of requisition whichever is less, as provided in s. 6 (2) of this Act XVII of 1947. The proviso to cl. (e) of s. 19 of 1939 Act is modified by s. 6 of this Act. Therefore the contradictory provision in s. 6 of this Act, in so far as proceedings pending on 24-3-47, are concerned, can only mean s. 19 of D. I. Act 1939 without the amendments made in the proviso to cl. (e), so that other procedures laid down therein may apply, on principle of harmonious construction, otherwise it is redundant.

For expiry of this Act see Amendment Act No. IX of 1951 (*supra*). Requisitions where no award was made, were further continued by Requisitioning and Acquisition of Immovable Property Act No. 30 of 1952 (that came into force on 14-3-52) by virtue of s. 23 and 24(2) and in those cases the law applicable is the Act of 1952, (a).

PART II

CHAPTER XI

THE REQUISITIONED LAND (APPORTIONMENT OF COMPENSATION) ACT, LI OF 1949

(Extracts)

3. (1) Notwithstanding anything contained in either of the Acts mentioned in section 2, where there are several persons interested in any requisitioned land, it shall be lawful and shall always be deemed to have been lawful for an arbitrator appointed in pursuance of either of the sections mentioned in clause (a) of Section 2, to apportion by his award the compensation payable in respect of the requisitioning or as the case may be, acquisition of the land, among the persons interested.
- (2) Where an arbitrator appointed in pursuance of either of the sections mentioned in clause (a) of section 2 has, before the 13th day of September 1949 made an award determining but not apportioning, the compensation payable, and such compensation has not been paid, the Government by which such compensation is payable, may, either on its own motion or upon the application of any person interested appoint the same or another arbitrator to apportion the compensation among the persons interested, and it shall be lawful for the arbitrator so appointed to make a supplementary award of the apportionment.
- (3) An appeal shall lie to the High Court against a supplementary award made under sub-section (2).
- (4) The provisions of the rules made under section 19 shall, in so far as they are applicable, apply to arbitrations and awards under this section as they appeal in relation to arbitrations and awards under the said section 19.

PART II

CHAPTER XII

THE REQUISITIONED LAND (CONTINUANCE OF POWERS) AMENDMENT ACT NO IX OF 1951

(Received the assent of President on 21. 3. 1951)

An Act further to amend the Requisitioned Land (Continuance of Powers) Act 1947.

Be it enacted by Parliament as follows :—

1. **Short title.** This Act may be called the Requisitioned Land (Continuance of Powers) Amendment Act, 1951.

2. **Amendment of Section 1, Act XVII of 1947 :—**For sub-section (3) of Section 1 of the Requisitioned Land (Continuance of Powers) Act, 1947, the following sub-section shall be substituted, namely :—

“(3) It shall cease to have effect in Part C States on the 1st day of April, 1952, and in Part A States :—

(a) as respects the requisitioned lands which, at the commencement of the Requisitioned Land (Continuance of Powers) Amendment Act, 1951, are subject to requisition by or under the authority of the Central Government, on the 1st day of April, 1952, and

(b) as regards the other requisitioned lands, on the 1st day of April 1951, except as respects things done, or omitted to be done before such cesser of operation of this Act, and Section 6 of the General Clauses Act, 1897 (X of 1897) shall apply upon such cesser of operation as if it had then been repealed by a Central Act.

Notes

The Union Parliament in amending the Requisitioned Land (Continuance of Powers) Act, 1947 by the Requisitioned Land (Continuance of Powers) Amendment Act 1951, provided only for the Continuance of requisitions by or under the authority of the Central Government while leaving the other requisitions to expire on the midnight of 31st March 1951. The requisitions which were so allowed to continue were again allowed to remain alive under S. 24 (2) of the Requisitioning and Acquisition of Immovable Property Act, 1952 which repealed the Act of 1947. This Act of 1952 had nothing to do with the requisitions which were allowed to expire on 31st March 1951 by the amended Act of 1947 (a).

PART II

CHAPTER XIII

The Requisitioning and Acquisition of Immovable Property Act, 1952

Act 30 of 1952*

An Act to provide for the requisitioning and acquisition of immovable property for the purposes of the Union..

Be it enacted by Parliament as follows :—

1. **Short title, extent and duration** :—(1) This Act may be called the Requisitioning and Acquisition of Immovable Property Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

† (3) It shall cease to have effect on the 14th day of March 1970, except as respects things done or omitted to be done before such cesser of operation of this Act and Section 6 of the General Clauses Act, 1897, shall apply upon such cesser of operation as if it had then been repealed by a Central Act.

2. **Definitions** :—In this Act, unless the context otherwise requires.—

(a) “award” means any award of an arbitrator made under Section 8 ;

(b) “competent authority” means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the function of the competent authority under this Act for such area as may be specified in the notification :

(c) “landlord” means any person who for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account, or on account or on behalf or for the benefit, of any other person or as a trustee, guardian or receiver for any other person, or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant ;

(d) the expression “person interested”, in relation to any property, includes all persons claiming, or entitled to claim, an interest in the compensation payable on account of the requisitioning or acquisition of that property under this Act ;

(e) “premises” means any building or part of a building and includes—

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building ;

* Amended by The Requisitioning and Acquisition of Immovable Property (Amendment) Act No. 31 of 1968 and Act No. 1 of 1970. (See hereafter).

† Omitted by Act No. 1 of 1970 (See hereafter).

Substituted by the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1958 (1 of 1958), S. 2, and again by (Amendment) Act No. 48 of 1963, S. 2, on 14-12-1963.

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof ;

(f) "prescribed" means prescribed by rules made under this Act :

(g) "property" means immovable property of every kind and includes any rights in or over such property ;

(h) "tenant" means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have derived title under the tenant under any law for the time being in force.

3. **Power to requisition immovable property :—**(1) Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned, the competent authority—

(a) shall call upon the owner or any other person who may be in possession of the property by notice in writing (specifying therein the purpose of the requisition) to show cause, within fifteen days of the date of the service of such notice on him, why the property should not be requisitioned ; and

(b) may, by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority, dispose of, or structurally alter, the property or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order.

(2) If, after considering the cause, if any, shown by any person interested in the property or in possession thereof, the competent authority is satisfied that it is necessary or expedient so to do, it may, by order in writing, requisition the property and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning ;

Provided that no property or part thereof—

(a) which is *bonafide* used by the owner thereof as the residence of himself or his family, or

(b) which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purpose of accommodation of persons connected with the management of such place of worship or such school, hospital, library or orphanage, shall be requisitioned :

Provided further that where the requisitioned property consists of premises which are being used as a residence by a tenant for not less than two months immediately preceding the date of the service of notice under sub-section (1), the competent authority shall provide such tenant with alternative accommodation which, in its opinion, is suitable.

4. **Power to take possession of requisitioned property :—**(1) Where any property has been requisitioned under Section 3, the competent authority may, by notice in writing, order the owner as well as any other person who may be in possession of the property to surrender or deliver posse-

ssion thereof to the competent authority or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may, for that purpose, use such force as may be necessary.

5. Rights over requisitioned property :—(1) All property requisitioned under Section 3 shall be used for such purposes as may be mentioned in the notice of requisition.

(2) Where any premises are requisitioned under Section 3, the competent authority may order the landlord to execute such repairs as may be necessary and are usually made by landlords in that locality and as may be specified in the notice, within such reasonable time as may be mentioned therein, and if the landlord fails to execute any repairs in pursuance of such order, the competent authority may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the compensation payable to the landlord.

***6. Release from requisitioning :—**(1) The Central Government may at any time release from requisition any property requisitioned under this Act and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force :

Provided that where the purposes for which any requisitioned property was being used cease to exist, the Central Government shall, unless the property is acquired under Section 7, release that property, as soon as may be, from requisition.

(2) Where any property is to be released from requisition, the competent authority may, after such inquiry, if any, as it may in any case consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person from whom possession was taken at the time of the requisition or to the successors-in-interest of such person.

(3) The delivery of possession of the property to the person specified in an order under sub-section (2) shall be a full discharge of the Central Government from all liability in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is given.

(4) Where any person to whom possession of any requisitioned property is to be given is not found and has no agent or other person empowered to accept delivery on his behalf, the competent authority shall cause a notice declaring that the property is released from requisition to

* New sub-section (1A) is added after sub-section 1 of S. 6 by Act 1 of 1970 extending in effect the period of acquisition or release from requisition to further three years from date of commencement of said Act i. e., 11-3-70 (See hereafter).

be affixed on some conspicuous part of the property and shall also publish the notice in the Official Gazette.

(5) When a notice referred to in sub-section (4) is published in the Official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof and the Central Government shall not be liable for any compensation or other claim in respect of the property for any period after the said date.

(6) Where any property requisitioned under this Act or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was requisitioned by reason of fire, earthquake, tempest, flood or violence of any army or of a mob or other irresistible force, the requisition shall, at the option of the Central Government, be void :

Provided that the benefit of this sub-section shall not be available to the Central Government where the injury to such property is caused by any wrongful act or default of that Government.

7. Power to acquire requisitioned property :—(1) Where any property is subject to requisition, the Central Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, at any time acquire such property by publishing in the Official Gazette a notice to the effect that the Central Government has decided to acquire the property in pursuance of this section :

Provided that before issuing such notice, the Central Government shall call upon the owner of, or any other person who, in the opinion of the Central Government, may be interested in, such property to show cause why the property should not be acquired : and after considering the cause, if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the Central Government may pass such orders as it deems fit.

(2) When a notice as aforesaid is published in the Official Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the Central Government free from all encumbrances and the period of requisition of such property shall end.

(3) No property shall be acquired under this section except in the following circumstances, namely :—

(a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the Central Government and the Government decides that the value of or the right to use, such work should be secured or preserved for the purposes of Government ; or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Central Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property.

(4) Any decision or determination of the Central Government under sub-section (3) shall be final and shall not be called in question in any court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvements of every description.

8. **Principles and method of determining compensation.** :—(1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,—

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement ;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is or has been, or is qualified for appointment as, a Judge of a High Court ;

(c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose ;

(d) at the commencement of the proceedings before the arbitrator, the Central Government and person to be compensated shall state what in their respective opinion is a fair amount of compensation ;

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid ; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable ;

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons ;

(g) nothing in the Arbitration Act, 1940 (X of 1940) shall apply to arbitrations under this section.

(2) The amount of compensation payable for the requisitioning of any property shall consist of—

(a) a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period and

(b) such sum or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely :

(i) pecuniary loss due to requisitioning ;

(ii) expenses on account of vacating the requisitioned premises ;

(iii) expenses on account of reoccupying the premises upon release from requisition ; and

- (iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.
- (3) The compensation payable for the acquisition of any property under Sec. 7 shall be—
 - (a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or
 - (b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less.

Notes

An acquisition under the Requisitioned Land (Continuance of Powers) Act, 1947, can only be made for the purpose of Government or where the appropriate Government considers that the cost of restoration of the requisitioned land would be excessive. State purposes, Union purposes and Government purposes must be treated as public purposes, (a). There can be no real Government purpose, unless the purpose benefits the members of the community at large who are governed by that Government. Acquisition proceedings started under the Requisitioned Land (Continuance and Powers) Act, must be treated as acquisition for public purposes, under the provisions of the Requisitioning and Acquisition of Immovable Property Act of 1952 provided that any decision or determination by the appropriate Government to acquire shall be final and shall not be called into question in any court. That being so, a stamp reporter or a taxing officer whose duty is to determine proper court-fees payable on the Memorandum of Appeal, against an award of the arbitrator under the Act of 1952, challenging the compensation awarded need not go into the question whether the acquisition itself was for a public purpose. There is another aspect of the matter. An appeal against the quantum of compensation payable under an award, proceeds on the basis that the acquisition was a valid acquisition, namely, an acquisition for public purpose and that the only question involved in such an appeal was assessment of just compensation for the property validly acquired, (a).

Section 8 of the Court-fees Act does not use the expression 'order' *simpliciter* but uses the expression 'order' relating to compensation 'under any Act for the time being in force.' That being so, there is no reason why the expression 'order' in Sec. 8 must be treated as an order under Sec. 2 (14), C. P. Code.

Section 8 lays down the principles and method of awarding of compensation, where parties do not agree to the suggested amount by an agreement. If no agreement is reached, an arbitrator is appointed by the Central Govern-

ment. He shall be or should be qualified to be a Judge of a High Court. The arbitrator can take the help of any expert to aid him in the assessment of compensation. He shall hear the parties and determine the amount which appears to him to be just. He must specify the person or persons to whom such compensation has to be paid, and detail the amount to be paid to each. If there is a dispute as to who is the proper claimant, the arbitrator should also determine this. The competent authority or arbitrator appointed under Sec. 8 shall have the powers of a Civil Court as mentioned in Sec. 12 of the Act.

9. Payment of compensation :—The amount of compensation payable under an award shall, subject to any rules made under this Act, be paid by the competent authority to the person or persons entitled thereto in such manner and within such time as may be specified in the award.

10. Appeal from orders of requisitioning :—(1) Any person aggrieved by an order of requisition made by the competent authority under sub-sec. (2) of Sec. 3 may, within twenty-one days from the date of service of the order, prefer an appeal to the Central Government :

Provided that the Central Government may entertain the appeal after the expiry of the said period of twenty-one days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Central Government may, after calling for a report from the competent authority and giving an opportunity to the parties of being heard and after making such further inquiry, if any, as may be necessary, pass such orders as it thinks fit and the order of the Central Government shall be final.

(3) Where an appeal is preferred under sub-section (1), the Central Government may stay the enforcement of the order of the competent authority for such period and on such conditions as it thinks fit.

Notes

The expression 'to show cause' in Sec. 3 (1) (a) means the right to be heard. It is essential that a party to whom such a notice has been issued should be given a hearing in person or by counsel for stating his case. If such an opportunity is not given, the requisitioning authority must be deemed to have acted without jurisdiction, (b).

Under Sec. 10, any person aggrieved by an order of requisition made by a competent authority under Sec. 3 (2) is enabled to prefer an appeal to the Central Government. This is an appeal at administrative level. The order of the Central Government is however final. The only further remedy is by resorting to the writ jurisdiction under Arts. 32 and 226 of the Constitution of India.

The appeal has to be preferred within 21 days from the date of service of order. For sufficient cause, the Central Government can admit an appeal even after the period fixed. The appellate body has to hear the parties after giving them adequate opportunity. It can also make further enquiry.

11. Appeals from awards in respect of compensation :—Any person aggrieved by an award of the arbitrator made under Sec. 8 may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situate :

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Notes

When an award of the arbitrator has been passed under Sec. 8, any party who is aggrieved by the award has the option to move the High Court in appeal within thirty days of the passing of the award. The High Court is that court in which the requisitioned or acquisitioned property is situate. The appeal can lie only in respect of the compensation awarded.

12. Competent authority and arbitrator to have certain powers of civil courts :—The competent authority and the arbitrator appointed under sec. 8, while holding an inquiry or, as the case may be, arbitration proceedings under this Act, shall have all the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of any document ;
- (c) reception of evidence on affidavits ;
- (d) requisitioning any public record from any court or office ;
- (e) issuing commissions for examination of witnesses.

13. Power to obtain information :—The Central Government or the competent authority may, with a view to carrying out the purposes of Sec. 3 or Sec. 6, or Sec. 7 or Sec. 8, by order require any person to furnish to such officer, as may be specified in the order, such information in his possession as may be specified relating to any property which is requisitioned or acquired, or intended to be requisitioned or acquired, under this Act.

14. Power to enter and inspect :—The competent authority or any officer empowered in this behalf by such authority by general or special order, may enter and inspect any property for the purposes of determining whether, and if so, in what manner, an order under this Act should be made in relation to such property or with a view to securing compliance with an order made under this Act.

15. Service of notice and orders :—(1) Subject to the provisions of this section and any rules that may be made under this Act, every notice or order issued or made under this Act shall,—

- (a) in the case of any notice or order of a general nature or affecting a class of persons, be published in the Official Gazette ; and
- (b) in the case of any notice or order affecting an individual, corporation or firm be served in the manner provided for the service of summons in Rule 2 of Order XXIX or Rule 3 of Order XXX, as the case

may be, in the First Schedule of the Code of Civil Procedure, 1908 (Act V of 1908) ; and

- (c) in the case of any notice or order affecting an individual person (not being a corporation or firm), be served on such person—
 - (i) by delivering or tendering it to that person; or
 - (ii) if it cannot be so delivered or tendered, by delivering or tendering it to any officer of such person or any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain ; or failing service by these means,

- (iii) by post.

(2) Where the ownership of the property is in dispute or where the person interested in the property are not readily traceable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in the Official Gazette, and where possible, by affixing a copy thereof on any conspicuous part of the property to which it relates.

16. Easement not to be disturbed :—No person interested in any property requisitioned or acquired under this Act shall, without the previous written consent of the competent authority or except for the purposes of effecting repairs or complying with a municipal requirement, wilfully disturb any convenience or easement attached to such property or remove destroy or render unserviceable anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the property,

17. Delegation of powers :—(1) The Central Government may, by notification in the Official Gazette, direct that the powers exercisable by it¹*** under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercisable also by an officer subordinate to that Government or ²(by the State Government or by an officer subordinate to the State Government).

(2) All notifications issued under sub-section (1) shall be laid, as soon as may be, before Parliament.

18. Protection of action taken in good faith :—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

(2) No suit or other legal proceeding shall lie against the Central Government or the competent authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done or in pursuance of this Act or any order made thereunder.

19. Bar of jurisdiction of civil courts :—Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any

¹ The words "by or" omitted by the Repealing and Amending Act, 1953 (42 of 1953) S. 4 and Sch. III.

² Substituted, *ibid*, for "the State Government."

matter which the competent authority or arbitrator is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

20. Penalty for offences :—Whoever contravenes any provision of this Act, or any rule made thereunder, or any order made or direction given under this Act, or obstructs the lawful exercise of any power conferred by or under this Act, shall be punishable with fine which may extend to one thousand rupees.

21. Certain persons to be public servants :—The competent authority, every arbitrator, every officer empowered by the Central Government or the competent authority, while exercising any power or performing any duty under this Act, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

22. Power to make rules :—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the procedure to be followed by the competent authority in making inquiries under Section 3 or Section 6 ;

(b) the procedure to be followed in arbitration proceedings and appeals under this Act ;

(c) the principles to be followed in determining the amount of compensation and method of payment of such compensation ;

(d) the principles to be followed in apportioning the cost of proceeding before the arbitrator and on appeal under this Act ;

(e) the manner of service of notices and orders ;

(f) any other matter which has to be, or may be, prescribed.

(3) All rules made under the provisions of this Act shall be laid as soon as may be, before Parliament,

23. Validation of certain requisitions and acquisition :—(1) All immovable property which purports to have been requisitioned by a State Government for any public purpose, being a purpose of the Union, under any Provincial or State Act and which, immediately before the 25th day of January, 1952 was used or occupied by the Central Government or by an officer or authority subordinate to that Government shall, as from that date, be deemed to be property duly requisitioned under Section 3 of this Act, and every such requisition shall, notwithstanding any judgment, decree or order of any court, be deemed always to have been valid as if this Act had been in force on and from the date of the requisition and the requisition had been duly made by a competent authority under this Act, and all the provisions of this act shall apply accordingly :

Provided that all agreements and awards for the payment of compensation in respect of any such property for any period of requisition before

the 25th day of January, 1952 and in force immediately before that date, shall be valid and shall be deemed always to have been valid and shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition after that date.

(2) Every acquisition of immovable property purporting to have been made before the commencement of this Act by a State Government for any public purpose, being a purpose of the Union, under any enactment for the time being in force in that State and which, immediately before such commencement, was used or occupied by the Central Government or by an officer or authority subordinate to that Government shall, notwithstanding any defect in, or invalidity of, the enactment or order under which the acquisition was made, be deemed for all purposes to have been validly made as if the provisions of the said enactment or order had been included and enacted in this section and this section had been in force on and from the date of the acquisition.

24. Repeals and savings :—(1) The Requisitioned Land (Continuance of Powers) Act, 1947, the Delhi Premises (Requisition and Eviction) Act, 1947; and the Requisitioning and Acquisition of Immovable Property Ordinance, 1952 are hereby repealed.

(2) For the removal of doubts, it is hereby declared that any property which immediately before such repeal was subject to requisition under the provisions of either of the said Acts or the said Ordinance shall, on the commencement of this Act, be deemed to be property requisitioned under Section 3 of this Act, and all the provisions of this Act shall apply accordingly :

Provided that—

(a) all agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Act, and in force immediately before such commencement, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition after such commencement ;

(b) anything done or any action taken (including any orders, notifications or rules made or issued) in exercise of the powers conferred by or under either of the said Acts or the said Ordinance shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such thing was done or action was taken.

25. [Amendment of Act 27 of 1950.] *Repealed by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and Sch 1.*

Notes

Apart from The Land Acquisition Act (1) of 1894 there are other statutes which deal with acquisition and compensation also, viz : The

Requisitioning And Acquisition of Immovable Property Act (XXX) of 1952, The Land Acquisition (Mines) Act 18 of 1885 and The Coal Bearing Areas (Acquisition and Development) Act 20 of 1957.

In Act 1 of 1894, Sec. 11 provides for an enquiry into the objections filed by persons interested and the passing of an award by the Collector. A person aggrieved against such award can move under Sec. 18 for a reference to the District Court so far as compensation is concerned while Sec. 30 enables a reference in respect of apportionment. An appeal lies under Sec. 54 against the decision of the District Judge to the High Court with a further appeal to the Supreme Court.

But in the Act 30 of 1952 in Sec. 10 it is provided that appeals from orders of requisitioning under Sec. 3 (2) lie to the Central Government whose orders are final. An Arbitrator under Sec. 8 is appointed by the Central Government when there is no agreement on the question of compensation. An appeal lies against the award of the Arbitrator to the High Court under Sec. 11. It was argued that the appeal to the Central Government is an administrative appeal and no hearing need be given to the objections filed by a party and objection was rejected without notice. But the Punjab High Court in *Pannalal vs. The State of Delhi* relying on *Sudhindranath vs. Sailendranath* held that his was against natural justice because a person must be given a reasonable opportunity to make out his case (a).

Further no appeal is provided in the matter of de-requisitioning under Sec. 6 when the Central Government decides as to the person to whom possession of the property is to be given:

Sec. 9 of the Land Acquisition (Mines) Act 18 of 1885 provides that where land is acquired and there is disagreement as to compensation, the procedure laid down in the Land Acquisition Act is to be followed i.e. reference under Sec. 18 and an appeal to High Court under Sec. 54 of the latter Act.

In the Coal Bearing Areas (Acquisition and Development) Act 20 of 1957, when there is dispute as to compensation, a Tribunal enquires and passes an award. An appeal lies therefrom under Sec. 29 to High Court against the award passed under Sec. 14 of the Act.

Apart from the statutory appeals that are provided, the remedy by way of writ petitions is always available. A writ of prohibition and mandamus were also held maintainable in said case. (b).

Applicability of Sections 6, 7 & 8—Effect when there is neither de-requisition nor acquisition—validity of award and reference—compensation for structures demolished during requisition—date of assessment of valuation—principles of valuation—In *Upendra Kumar Nandi vs. Union of India* (c) the facts were that a land containing some structures in Barrackpore was requisitioned under Rule 75A of the Defence of India Rules 1939, for military purposes in connection with construction of

(a) *Pannalal v. The State of Delhi*, A. I. R. 1954 Punj. 251 ; *Sudhindra Nath v. Sailendra Nath*, A. I. R. 1952 Cal. 65.

(b) *S. R. P. Das vs. State of Orissa*, A. I. R. 1952, Orissa 98.

Barrackpore Airfield. Some structures were demolished thereafter and a compensation of Rs. 4600/- was offered but not accepted. So there was reference to Arbitrator under Section 19 of the Defence of India Act 1939 on 6.2.59 when the property was still under requisition. The Arbitrator gave an award of Rs. 6579/- along with interest at the rate of 6p.c. *per annum*. Hence the appeal, mainly on the ground that for assessing the compensation for the demolished structure, the cost of restoring the building in the condition it was in 1943 (when it was requisitioned) should be calculated at the rate prevailing in 1957 when notice of demolition was given and not at the rate prevailing in 1943-44.

Held that the question of restoration of property arises on release of the property from requisition dealt with in Section 6 of the Requisitioning and Acquisition of Immovable Property Act, 1952. It may arise as a question of terminal compensation when the requisitioned property is acquired under Section 7 of the Act. In the first of these two contingencies sub-section (2) of Sec. 8 is the relevant provision, while in the second contingency sub-section (3) of Section 8 is relevant. But Clauses (iii) & (iv) are provisions for compensation upon release from requisition and restoring the possession on such release. Whole of sub-section (3) is relevant only when requisition has been converted to acquisition under Section 7 of the Act.

That terminal compensation can be offered by the Collector when either the property under requisition has been released or converted into acquisition. For making that assessment the relevant date for the basis of rates for calculation of expenses for restoration of demolished building shall be the date when the assessment will have to be made. It will be proper for the Collector to ascertain the expenses for restoration of the building to the condition in which it was in 1943-44 (the date of demolition) at the rates prevailing at the relevant date and deduct from that amount depreciation at the usual rate for the whole period from the date of construction of the building up to the date on which the assessment shall be made. The claimants shall be entitled to interest from the date of the demolition of the building up to the date on which the compensation will be paid at the rate of 5 *per cent per annum*. When, as in the present case, requisition is still continuing, neither there has been restoration nor acquisition, the Collector had no jurisdiction to make any assessment and offer of terminal compensation for demolished building, so there cannot also be any reference made legally for arbitration. Whole proceeding has, therefore, been illegal and without jurisdiction, (c).

Law applicable to proceedings pending at the commencement of this Act—It has been held in *Union of India vs. Nirode Kanta Sen* (d) that the Defence of India Act 1939 has been repealed and replaced by this Requisition and Acquisition of Immovable Property Act 30 of 1952 on 14.3.52. By virtue of Sec. 24 (2) of this Act any property which immediately before

(c) *Upendra Kumar Nandi vs. Union of India*, 75 C. W. N. 511 (D. B.).

(d) *Union of India vs. Nirode Kanta Sen*, 75 C. W. N. 880 (D. B.).

repeal (of Act XVII of 1947) was subject to requisition under the provisions of said Act, shall on the commencement of this Act be deemed to be property requisitioned under Sec. 3 of this Act which is applicable. See notes under D. I. Act.

PART II

CHAPTER XIV

THE DEFENCE OF INDIA ACT No. 51 of 1962.

(12th December, 1962)

(EXTRACT)

An Act to provide for special measures to ensure the public safety and interest, the defence of India and Civil defence and for the trial of certain offences and for matter connected therewith.

Whereas the President has declared by Proclamation under Clause (1) of Article 352 of the Constitution that a grave emergency exists whereby the security of India is threatened by external aggression.

AND WHEREAS it is necessary to provide for special measures to ensure the public safety and interest, the defence of India and Civil defence and for the trial of certain offences and for matters connected therewith.

Notes.

The commentaries of the Defence of India Act and Rules 1939 may be applied in most cases and in some cases with modification in Defence of India Act 1962.

The Defence of India Act No. 51 of 1962 was published on 12th December, 1962 after a Proclamation of Emergency under Cl. (1) of Art. 352 of the Constitution of India and, by virtue of sub-sec. (3) of Sec. 1 of the said Act of 1962, it was to remain in force during the period of operation of the Proclamation of Emergency issued on October 26th 1962 and for a period of six months thereafter.

The D.I. Act 1962 expired 10th July 1968, six months after the date of revocation of Proclamation of Emergency made on 10th January 1968.

The D.I. Rules known as the Defence of India Rules 1962 was promulgated on 5th November 1962¹ in exercise of powers conferred by Section 3 of Defence of India Ordinance, 1962 (4 of 1962) prior to publication of Defence of India Act 1962 on 12th Dec. 1962.

¹ Vide notification No. 9 S. R. 1465 dated 5th Nov., 1962 published in the Gazette of India Ext. 1962, Part II, Section 3 (i), p. 577.

By Section 48 of the D.I. Act 1962 although the Defence of India Ordinance 1962 (4 of 1962) and Defence of India (Amendment) Ordinance (6 of 1962) were repealed, still by sub-sec. (2) of Sec. 48 of D.I. Act of 1962 all rules made under the said Ordinance were kept alive.

But it is to be noted that the said Defence of India Rules 1962 does not contain any provision or procedure for requisition of immovable properties. So, in exercise of powers under Sec. 38 of the Defence of India Act 1962, the Defence of India (Requisitioning and Acquisition of Immovable Property) Rules 1962 was promulgated on 13th December 1962² which provides procedures for requisition and acquisition of immovable properties. Further provisions were enacted in the Requisitioning and Acquisition of Immovable Property Act, 1952 which again was amended.

The Requisitioning and Acquisition of Immovable Property Act No. 31 of 1968 and Act 1 of 1970 are meant to apply in normal times.

Section 19 of D.I. Act 1939 corresponds to Sections 29 to 39 of the 1962 Act and Rules 75A of Act of 1939 corresponds to Rule 108 so far as movable properties are concerned and the Defence of India (Requisitioning and Acquisition of Immovable Property) Rules, 1962 is wholly applicable so far as immovable properties under D.I. Act are concerned. That is why there are two sets of Rules. By virtue of emergency being declared all rights conferred by Part III of the Constitution as may be mentioned in the proclamation besides Art. 19 remain suspended till it is revoked by another proclamation.

Be it, therefore, enacted by Parliament in the Thirteenth Year of the Republic of India as follows :

CHAPTER 1

Preliminary

1. Short title, extent, application, duration and savings :—(1) This Act may be called the Defence of India Act, 1962.

(2) It extends to the whole of India and it applies also—

(a) to citizens of India outside India ;

(b) to persons in the service of the Government, wherever they may be ;

(c) in respect of the regulation and discipline of the naval, military and air forces or any other armed force of the Union, to members of, and persons attached to, employed with, or following, those forces, wherever they may be ;

(d) to, and to persons on, ships and aircraft registered in India, wherever they may be.

² Vide Notification No. G. S. R. 1715, dated the 13th December, 1962, published in Gazette of India, Ext., 1962, Part II, Sec. 3 (i), p. 727.

(3) It shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October, 1962, and for a period of six months thereafter but its expiry under the operation of this sub-section shall not affect—

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

2. **Definition** :—In this Act, unless the context otherwise requires,—

(a) “civil defence” includes any measures not amounting to actual combat, for affording defence against any form of hostile attack by a foreign power or for depriving any form of hostile attack by a foreign power of its effect either wholly or in part whether such measures are taken before, during or after the time of the attack ;

(b) “Civil Defence Services” mean the services formed wholly or mainly to meet the needs of civil defence ;

(c) “enemy” means—

(i) any person or country committing external aggression against India ;

(ii) any person belonging to a country committing such aggression ;

(iii) such other country as may be declared by the Central Government to be assisting the country committing such aggression ;

(iv) any person belonging to such other country ;

(d) “enemy territory” means—

(i) any area which is under the sovereignty of a country referred to in sub-clause (i), or a country referred to in sub-clause (iii), of clause (c) of this section ;

(ii) any area which the Central Government may, by notification in the Official Gazette, specify to be enemy territory for the purposes of this Act or any rule made thereunder ;

(e) “military operations” mean the operations of the Armed Forces of the Union ;

(f) “occupied territory” means any territory of India which is for the time being in the occupation of a country referred to in sub-clause (i) or a country referred to in sub-clause (iii), of clause (c) of this section ;

- (g) "prescribed" means prescribed by rules made under this Act ;
- (h) "Proclamation of Emergency" means the Proclamation issued under clause (1) of Article 352 of the Constitution on the 26th October 1962 ;
- (i) "State Government" in relation to a Union territory means the administrator thereof.

CHAPTER II

Emergency Powers

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3. **Power to make rules :—**(1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, and may empower any authority to make orders providing for, all or any of the following matters, namely :—

(1) ensuring the safety and welfare of the Armed Forces of the Union, ships and aircrafts, and preventing the prosecution of any work likely to prejudice the operations of the Armed Forces of the Union.

(2) prohibiting anything likely to prejudice the training, discipline or health of the Armed Forces of the Union ;

(3) preventing any attempt to tamper with the loyalty of persons in, or to dissuade (otherwise than with advice given in good faith to the person dissuaded for his benefit or that of any member of his family or any of his dependents) persons from entering, the service of the Government ;

(4) preventing or prohibiting anything likely to assist the enemy or to prejudice the successful conduct of military operations or civil defence including—

(a) communications with the enemy or agents of the enemy ;

(b) acquisition, possession without lawful authority or excuse and publication of information likely to assist the enemy ;

(c) contribution to, participation or assistance in, the floating of loans raised by or on behalf of the enemy ;

(d) advance of money to, or contracts or commercial dealings with the enemy, enemy subjects or persons residing, carrying on business, or being, in enemy territory or occupied territory ; and

(e) acts, publications or communication prejudicial to civil defence or military operations ;

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(35) the requisitioning and acquisition of any movable property ; and the principles on which and the manner in which compensation shall be determined and given in respect of such requisitioning or acquisition ;

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CHAPTER VI

Requisitioning and Acquisition of Immovable Property

29. **Requisitioning of immovable property :—**(1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India, civil defence, public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning :

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

30. **Payment of compensation :—**Whenever in pursuance of Section 29 the Central Government or the State Government, as the case may be, requisition any immovable property, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following namely :—

(i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality ;

(ii) if in consequence of the requisition of the property the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change ;

(iii) such sum or sums, if any, as may be found necessary to compensate the person interested for damage caused to the property on entry after requisition or during the period of requisition, other than normal wear and tear :

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as

the case may be, for referring the matter to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine :

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.—In this section and in section 37, the expression “person interested” in relation to any property includes all persons claiming or entitled to claim an interest in the compensation payable on account of the requisitioning or acquisition of that property under this Act.

Notes on Sec. 29 & 30

S. 29. Unless the statute provides, the relationship of landlord and tenant is not established, (a).

The Sections 36 & 37 apply to permanent acquisitions.

The requisitioning and acquisitions of immovable properties under D. I. Act 1962 are covered by a separate set of rules known as the Defence of India (Requisitioning and Acquisition of Immovable Property) Rules, 1962.

Apportionment :—Under the second Proviso to S. 30 of 1962 Act, the arbitrator has been given the power to apportion the amount of compensation between the claimants.

Compensation :—The agreement with Government regarding the amount of compensation payable must be in conformity with Art. 298 of the Constitution of India as otherwise it will not be valid and binding, (b). Where properties are compulsorily requisitioned, the amount of compensation should not be determined solely on the basis of fair rent as fixed under the Rent Control laws. That figure is merely a piece of evidence of rent prevailing in the locality, but other circumstances must also have to be taken into consideration, (c). But contrary view has been held in Punjab, (d). Symbolic compensation in respect of land lying vacant or fetching no income is repelled, (e).

Appeal against award of an arbitrator :—By virtue of proviso to Cl. (iv) of Rule 111 of the Defence of India Rules 1962, an appeal against award of arbitrator lies to the Compensation Tribunal appointed under Rule 113 within 30 days of the receipt of the order in the form and manner prescribed by the Government. A writ petition may lie only in special cases.

(a) *Union of India v. Ram Parsad*, A. I. R. 1952 Punj. 116 : I. L. R. 1952 Punj. 300.

(b) *Dinendra Mullick v. Union of India*, A. I. R. 1952, Cal. 915.

(c) *Haji Mahammad v. State of West Bengal*, 1959 S. C. J. 443 : A. I. R. 1959 S. C. 448 ; *Province of Bengal v. Board of Trustees*, 1946 Cal. 416 : 50 C. W. N. 825 ; *Dawood Ali v. State of Bombay*, 1954 Bom. 323.

(d) *Raghubir Saran v. State of Punjab*, L. R. 530.

(e) *Province of Bengal v. Board of Trustees*, *supra*. *Narayana Gajapati Raju v. Rev. Div. Officer*, 66, I. A. 104 : A. I. R. 1939, P. C. 98.

Delegation :—It is only the authority or officer who is delegated by virtue of a notification under S. 40 can requisition. Where a District Magistrate by virtue of notification under S. 40 was empowered under S. 29, an Additional District Magistrate vested with powers of a District Magistrate under S. 10 (2) of Cr. P. C. is not competent to requisition, (e¹). Proviso to S. 30 (1) makes a distinction between determination in accordance with S. 30 (1) and a determination by the Arbitrator. The Arbitrator is not fettered by tests laid down in different clauses of S. 30 and is free to assess fair compensation for the disputed property, (f).

Suspension of Fundamental Rights :—In case of emergency e.g., in case of war etc., a Proclamation of Emergency shall have to be declared under Art. 352 of the Constitution and in case of failure of State machinery etc., a Proclamation is declared under Art. 356 (President's Rule). In a declaration of Proclamation of Emergency, under Art. 325 while it is in operation, Art. 19 only remains suspended throughout India under Art. 358 of the Constitution. Under Art. 359 when Proclamation of Emergency is in operation, the President may also declare suspension of enforcement of rights conferred by Part III of the Constitution. It does not expressly suspend those rights which are mentioned in the Order and all proceedings in courts concerning those rights but the right to enforce them remain suspended during the force of the Proclamation or for shorter period as may be specified. Defence of India Act 1962 and Ordinances are promulgated under Art. 352 (1) read with Art. 358 of the Constitution. So only Art. 19 remains suspended and not art. 31 unless it is so mentioned. So the question regarding compensation can be challenged subject to Art. 31 (1) of the Constitution, (g). Principles laid down in *Bela Banerjea's* case are applicable in cases prior to 4th Amendment of the Constitution i. e., 27-4-55, (h).

31. Power to obtain information and give direction :—The Central Government or the State Government, as the case may be, may, with a view to requisitioning any property under section 29 or determining the compensation payable under section 30, by order—

- (a) require any person to furnish to the authority mentioned therein such information in his possession relating to any property as may be specified ;
- (b) direct that the owner, occupier or the person in possession of the property shall not, without the permission of Government, dispose of it or where it is a building, structurally alter it till the expiry of such period as may be specified in the order.

32. Power to entry into, and inspection of property, etc. :—Any person authorised in this behalf by the Central Government or the State Government

(e¹) *Hari Chand Agarwal v. The Batala Engineering Co.*, A. I. R. 1969, S. C. 483.

(f) *Union of India v. Provat Kumar Bagchi*, 1969, I. L. R. Cal. 375.

(g) *Makhan Singh v. State of Punjab*, A. I. R. 1964, S. C. 381 ; *District Collector v. Ibrahim & Co.*, A. I. R. 1970, S. C. 1275.

(h) *State of Gujarat v. Shantilal Mangaldas*, A. I. R. 1969, S. C. 634 ; (1969) 1, S.C.A. 461.

as the case may be, may enter into any immovable property and inspect such property for the purpose of determining whether, and if so in what manner, an order under section 29 should be made in relation to such property or with a view to securing compliance with any order made under that section.

33. Eviction from requisitioned property :—(1) Any person remaining in possession of any requisitioned property in contravention of any order made under section 29 may be summarily evicted from the property by any officer empowered in this behalf by the Central Government or the State Government, as the case may be.

(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

34. Penalty for contravention of any order regarding requisitioning :—If any person contravenes any order made under section 29 or section 31, he shall be punishable with imprisonment for a term which may, extend to one year, or with fine, or with both.

35. Release from requisition :—(1) Where any property requisitioned under section 29 to be released from such requisition, the Government by which or under whose authority the property was requisitioned or any person generally or specially authorised by it in this behalf may, after such inquiry, if any, as it or he may in any case, consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person who appears to the Government or, as the case may be, the person authorised as aforesaid, to be entitled to the possession of the property at the time such order is made.

(2) The delivery of possession of the property to the person specified in the order under sub-section (1) shall be a full discharge of the Government from all liabilities in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is delivered.

36. Acquisition of requisitioned property :—(1) Any immovable property which has been requisitioned under section 29 may, in the manner hereinafter provided, be acquired in the circumstances and by the Government specified below, namely :—

- (a) where any works have, during the period of requisition, been constructed on, in the property wholly or partly at the expense of any Government, the property may be acquired by that Government if it decides that the value of or the right to use, such works shall, by means of the acquisition of the property, be preserved or secured for the purposes of any Government, or
- (b) where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at that time, the property may be acquired by that Government.

(2) When any Government as aforesaid decides to acquire any immovable property, it shall serve on the owner thereof or where the owner is not readily traceable or the ownership is in dispute, by publishing in the Official Gazette, a notice stating that the Government has decided to acquire it in pursuance of this section.

(3) Where a notice of acquisition is served on the owner of the property or is published in the Official Gazette under sub-section (2), then, at the beginning of the day on which the notice is so served or published, the property shall vest in the Government free from any mortgage, pledge, lien or other similar encumbrances and the period of requisition thereof shall come to an end.

(4) Any decision or determination of a Government under sub-section (1) shall be final, and shall not be called in question in any court.

(5) For the purposes of this section, "works" includes every description of buildings, structures and improvements of the property.

37. Compensation for acquisition of requisitioned property :—(1) The compensation payable for the acquisition of any property under section 36 shall be—

(a) the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of the requisition, whichever is less.

Notes :—The language of cl. (b) is same as those of cl. (b) of S. 8 (3) of Act 30 of 1952. The said clause is declared *ultra vires* in *Union of India v. Harjivandas Parekh*, (i).

(2) Where any person interested is aggrieved by the amount of compensation determined in accordance with sub-section (1), he may make an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator appointed in this behalf by the Central Government or the State Government, and the amount of compensation to be paid shall be such as may be determined by the arbitrator in accordance with sub-section (1).

(3) The provisions of section 31 and section 32 shall apply in relation to the acquisition of any property or the determination of compensation for such acquisition as they apply in relation to the requisitioning of any property or the determination of compensation for such requisitioning.

(4) Where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and his decision thereon shall be final.

38. Power to make rules :—(1) The Central Government or the State Government, as the case may be, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may prescribe—

- (a) the procedure to be followed in arbitration proceedings under this Chapter ;
- (b) the period within which the owner of any property or any other person interested in the amount of compensation may apply to the Government concerned for referring the matter to an arbitrator ;
- (c) the principles to be followed in apportioning the costs of proceedings before the arbitrator ;
- (d) the method of payment of compensation ;
- (e) the manner of service of notices and orders ;
- (f) any other matter which has to be, or may be prescribed.

39. Certain properties requisitioned under previous law to be deemed to be requisitioned under this Chapter :—Any property referred to in sub-section (2) of section 24 of the Requisitioning and Acquisition of Immovable Property Act, 1952, (30 of 1952), which continued, immediately before the commencement of that Act, to be subject to requisition under the Requisitioned Land (Continuance of Powers) Act, 1947, (17 of 1947), and has not, immediately before the commencement of this Act, been released from requisitioning shall, notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any court, be deemed to be the property requisitioned under sub-section (1) of section 29 if such property is, in the opinion of the Central Government, now required for any of the purposes specified in that sub-section ;

Provided that—

- (a) all agreements or awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Act and in force immediately before such commencement, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period after such commencement ;
- (b) anything done or any action taken (including any orders, notifications or rules made or issued) under the Requisitioning and Acquisition of Immovable Property Act, 1952, (30 of 1952), or under the Requisitioned Land (Continuance of Powers) Act, 1947, (17 of 1947), and continued under the first-mentioned Act, shall, in so far as it is not inconsistent with the provisions of this Chapter or any rules or orders made thereunder, be deemed to have been done or taken under this Chapter.

CHAPTER VII

SUPPLEMENTAL

40. Power to delegate :—(1) The Central Government may, by order, direct that any power or duty which by this Act or by any rule made under

this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also—

- (a) by any officer or authority subordinate to the Central Government, or
- (b) whether or not the power or duty relates to a matter with respect to which a State Legislature has power to make laws, by any State Government or by any officer or authority subordinate to such Government, or
- (c) by any other authority.

(2) The State Government may be order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed on the State Government or which, being by this Act or any such rule conferred or imposed on the Central Government, has been directed under sub-section (1) to be exercised or discharged by the State Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority not being (except in the case of a Union territory) an officer or authority subordinate to the Central Government.

41. Rules to be laid before Houses of Parliament :—Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

42. Jurisdiction of ordinary courts :—(1) Except as may be provided in this Act or in any rule made thereunder or in any order made under any such rule by the Central Government or the State Government or by an officer not below the rank of Collector empowered under sub-section (1) or sub-section (2) of section 40 to make such order, the ordinary criminal and civil courts shall continue to exercise jurisdiction.

(2) For the removal of doubts, it is hereby declared that any provision in any such rule or order as aforesaid to the effect that the decision of any authority not being a court shall be final or conclusive shall be a sufficient (?) excepting provision within the meaning of sub-section (1).

43. Effect of Act and rules, etc., inconsistent with other enactments :—The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

44. Ordinary avocations of life to be interfered with as little as possible :—Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little

as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence.

45. Savings as to orders :—(1) No order made in exercise of any power conferred by or under this Act shall be called in question in any court.

(2) Where an order purports to have been made or signed by any authority in exercise of any power conferred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

46. Chapter III not to apply to measures taken for the protection of Armed Forces :—Unless otherwise expressly provided in any rules or orders made under Chapter III, nothing contained in that Chapter or any such rules or orders shall apply to the Armed Forces of the Union or to any measures taken by any of the authorities in control of the Armed Forces for the purpose of securing the defence or safety of such forces or for the protection of any naval military or air force installation or stores.

47. Protection of action taken under the Act :—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder or any orders issued under any such rule.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rule made thereunder or any order issued under any such rule.

48. Repeal and saving :—(1) The Defence of India Ordinance, 1962, (4 of 1962), and the Defence of India (Amendment) Ordinance, 1962, (6 of 1962) are hereby repealed.

(2) Notwithstanding such repeal, any rules made, anything done or any action taken under the Defence of India Ordinance, 1962, as amended by the Defence of India (Amendment) Ordinance, 1962 shall be deemed to have been made, done or taken under this Act as if this Act had commenced on the 26th October, 1962.

49. Validation of certain requisition :—All property, immovable or movable, purporting to have been requisitioned under the Defence of India Ordinance, 1962, on or after the 26th October, 1962 and before the coming into force of the relevant provisions of that Ordinance or the Defence of India Rules, 1962 made thereunder, shall be deemed to have been validly requisitioned, as if that Ordinance and those rules had been in force on and from the 26th October, 1962 and accordingly, the provisions of this Act and those rules apply to and in relation to such requisition.

PART II

CHAPTER XV

THE DEFENCE OF INDIA RULES, 1962

Relevant Provisions

¹ G. S. R. 1465, dated the 5th November, 1962.—In exercise of the powers conferred by section 3 of the Defence of India Ordinance, 1962 (4 of 1962), the Central Government hereby makes the following rules, namely :—

PART I

PRELIMINARY

1. **Short title.**—These Rules may be called the Defence of India Rules, 1962.

2. **Definitions.**—In these rules, unless the context otherwise requires :—

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5. **Non-compliance with these Rules or orders made thereunder :—**If any person to whom any provision of these Rules relates, or to whom any order made in pursuance of these Rules is addressed or relates, or who is in occupation, possession or control of any land, building, vehicle, vessel, aircraft or other thing to which such provision relates, or in respect of which such order is made—

(a) fails without lawful authority or excuse, himself, or in respect of any land, building, vehicle, vessel, aircraft or other thing of which he is in occupation, possession or control, to comply, or to secure compliance, with such provision or order, or

(b) evades, or attempts to evade, by any means such provision, or order,—

he shall be deemed to have contravened such provision or order ; and in these Rules the expression “contravention” with its grammatical variations includes any such failure, evasion or attempt to evade.

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PART XI

REQUISITION AND ACQUISITION OF MOVABLE PROPERTY

107. **Definitions.**—(1) In this Part,—

(a) “competent authority” means the Central Government or the State Government or any person appointed by the Central

¹ Published in the Gazette of India, Extraordinary, 1962, Part II, Section 3 (i), p. 577.
The Rules made under the Ordinance were saved by s. 48 of Act 51 of 1962.

Government or the State Government to exercise the powers of competent authority under any provision in this part ; and

(b) "movable property" includes,—

(i) any vessel or aircraft for the time being in India ;

(ii) any vessel or aircraft registered in India, wherever it may be ; and

(iii) any property forming part of or on board any such vessel or aircraft.

(2) Any notice issued or order made under any provision in this part shall be deemed to have been served on the owner of any property if it is served on the person having possession or control of that property.

108. Requisitioning of property.—(1) If in the opinion of the competent authority it is necessary or expedient so to do for securing the defence of India and civil defence, the public safety, the efficient conduct of military operations or the maintenance of services and supplies essential to the life of the community, the competent authority may, by order in writing, requisition any movable property and may make such further orders as appear to it to be necessary or expedient in connection with the requisition.

(2) Where the competent authority has requisitioned any property under sub-rule (1), it shall vest in the Government for the period of the requisition and the Government may use or deal with it in such manner as may appear to it to be expedient.

(3) Without prejudice to any powers otherwise conferred by these rules, any person authorised by a competent authority may enter any premises and inspect any property therein or thereon for the purpose of determining whether, and, if so, in what manner, any order under this rule should be made in relation to such property, or with a view to securing compliance with any order made under this rule.

109. Release from requisition :—(1) The competent authority may, at any time release from requisition any property requisitioned under rule 108 and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken, subject only to the changes caused by reasonable wear and tear.

(2) Where any property is to be released from requisition, the competent authority may, after such enquiry, if any, as it may in any case consider necessary to make or cause to be made, specify by order in writing to whom possession of the property shall be given.

(3) The delivery of possession of the requisitioned property to the person specified in the order made under sub-rule (1) shall be a full discharge of the Government from all liability in respect of such property and the requisition shall be at an end :

Provided that nothing in this rule shall prejudice any right in respect of the property which any other person may be entitled to by due process of law to enforce against the person to whom the possession of the property is so delivered.

(4) Where the person to whom the possession of any requisitioned property is to be given cannot be found and has no legal agent or other person empowered to accept delivery on his behalf, the competent authority shall

cause a notice declaring that the property is released from requisition to be published in the official Gazette.

(5) When a notice referred to in sub-rule (4) is published in the official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof and the Government shall not be liable for any compensation or other claims in respect of the property for any period after the said date.

110. Power to acquire requisitioned movable property :—(1) In respect of any property requisitioned under rule 108, the competent authority may, at any time, serve upon the owner or, if the owner cannot be found, publish in the official Gazette, a notice to the effect that the competent authority has decided to acquire such property in pursuance of this rule.

(2) When a notice as aforesaid is served upon the owner or published in the official Gazette as the case may be, the requisitioned property shall as and from the beginning of the day on which the notice is so served or published vest absolutely in the Government free from all encumbrances and the period of requisition of such property shall end.

111. Compensation for requisitioning of property :—The compensation payable in respect of requisitioning of any movable property, including vehicles, vessels and aircraft, shall be the sum total of the following items :—

(i) interest on the cost at which the owner had purchased the property calculated in a manner and at a rate, not being below 3% or above 6% per annum, that may be prescribed by the Government by a general or special order for any class of property :

Provided that where the property has been obtained by the owner as a gift or its cost cannot be established by him to the satisfaction of the competent authority or its cost exceeds the current replacement price of the property, the current price of the same property or property which, in the opinion of the competent authority, is substantially similar to it, shall be taken to be its cost ;

(ii) an amount representing depreciation of the property during the period of its requisition calculated at a rate not exceeding 30% per annum and in a manner that may be prescribed by the Government by a general or special order for any class of property ;

¹[(iii) an amount for the loss of the use of the property or of any profits that might have been earned but for the requisition, at such percentage, not being less than 3 percent per annum, as may be prescribed by the Government, of the cost referred to in (i) above as reduced by depreciation calculated at the same rate as for (ii) above in such manner and for such period as may be so prescribed.]

(iv) any further amount that the Central Government may by general or special order specify ;

¹ Subs. by G. S. R. 1593, dated 24-11-1962, for cl. (iii).

Provided that in the case of a property for which the full consideration due under a hire-purchase agreement has not been paid, so much of the compensation as relates to items (iii) and (iv) above shall be payable to the hirer and the balance, representing (i) and (ii) above shall be made over to the financier till he receives the full consideration and this provision shall override any terms to the contrary in the hire-purchase agreement :

Provided further that if during the period of requisition the property is damaged otherwise than by normal wear and tear or lost at a time when it is not insured, there shall be paid to the owner additional compensation of a sum equal to the cost of making good the damage or, in the case of a total loss, a sum equal to the compensation that may be payable if the property is acquired on the date of the loss, the compensation being determined in the manner set out below :

Provided also that the owner shall have the right to appeal to the Compensation Tribunal hereinafter provided within thirty days of the receipt of the order of the competent authority assessing the compensation ¹[or within such further period as the Tribunal may, for sufficient cause, allow], in the form and manner that may be prescribed by the Central Government by a general or special order.

112. Compensation for acquisition of property :—The compensation payable in respect of the acquisition of any movable property shall be the controlled price of the property, that is to say, the price fixed by order under any law for the time being in force :

Provided that, in respect of the property the price of which is not controlled or which is not new, the compensation shall not exceed a sum equal to the price which might have to be paid for its replacement on the date of the acquisition, reduced by a sum equal to the depreciation of the property, calculated in the manner and at a rate not exceeding 30% per annum prescribed by the Central Government in a general or special order for any class of property.

*Explanation :—*In arriving at the price which might have to be paid for the replacement of the property, no account shall be taken of any appreciation in the value thereof after the eighth day of October, 1962 :

Provided further that the owner of the property shall have the right to appeal to the Compensation Tribunal hereinafter provided, within thirty days of the receipt of the order of the competent authority assessing the compensation ²[(or within such further period as the Tribunal may, for sufficient cause, allow)] in the form and manner

¹ Ins. by G. S. R. 1813, 28-12-1962.

² Ins. by G. S. R. 1813, dated 28-12-1962.

that may be prescribed by the Central Government by a general or special order :—

Provided also that where an agreement has been reached between the competent authority and the owner of the property, the compensation agreed to shall be payable, notwithstanding that it is more or less than the amount payable as aforesaid, unless it is revised by the Compensation Tribunal hereinafter provided, on a reference by the State or Central Government, after giving an opportunity of being heard to the owner :

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113. Compensation Tribunal :—(1) The Central Government shall by notification appoint a Compensation Tribunal for such area as may be specified in the notification to exercise the functions conferred on the Compensation Tribunal by the foregoing rules.

(2) The Compensation Tribunal shall consist of,—

(i) a person who has for at least ten years either held a judicial post or been in practice as an Advocate of a High Court, and

(ii) a person who has for at least ten years been in the practice of Accountancy as a Chartered Accountant under the Chartered Accountants Act, 1949 (37 of 1949), or as a registered accountant under any law previously in force or partly as a registered accountant and partly as a chartered accountant, or any person who has had, in the opinion of the Central Government, adequate experience of a character which renders him suitable for appointment to the Tribunal.

(3) If the members of a Tribunal constituted for any area differ in their assessment of the compensation payable to the owner of a property, the case shall be referred by the Central Government to a member of a Tribunal constituted for any other area and it shall be decided according to the assessment made by him.

(4) The orders passed by the Compensation Tribunal on appeal or revision shall be final.

(5) The Compensation Tribunal shall have all the powers of a Civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the discovery and production of documents and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

(6) The Central Government may, by order—

(a) prescribe the procedure to be followed by the Compensation Tribunal in proceedings under this rule ; and

(b) make provision generally for carrying into effect the provisions of this rule.

² Fourth proviso omitted by G. S. R. 1593, dated 24-11-1962.

114. Payment of compensation :—The compensation determined by the competent authority for requisitioning or acquiring property shall be paid within such period, at such intervals and in such manner as the Central Government may, by a general or special order, prescribe :

Provided that where payment of the compensation is delayed beyond the period so prescribed, interest shall be payable on the amount or part of the amount in arrear at such rate not being below 3 per cent, or above 6 per cent. per annum and with effect from such date or dates that the Central Government may prescribe by a general or special order.

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PART II

CHAPTER XVI

THE DEFENCE OF INDIA (REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY) RULES, 1962

¹ **G. S. R. 1715, dated the 13th December, 1962 :—**In exercise of the powers conferred by section 38 of the Defence of India Act, 1962 (51 of 1962) ; the Central Government hereby makes the following rules, namely :—

1. Short title :—These rules may be called the Defence of India (Requisitioning and Acquisition of Immovable Property) Rules, 1962.

2. Definitions :—In these rules, unless the context otherwise requires,—

(a) “Act” means the Defence of India Act, 1962 ;

(b) “competent authority” means—

(i) the Central Government, or

(ii) a State Government to which, or any officer or authority subordinate to the Central Government or a State Government to whom, the powers conferred or duties imposed on the Central Government under the relevant provision of Chapter VI of the Act have been delegated under section 40 of the Act, or

(iii) any officer or authority authorised by the Central Government or a State Government by a notification in the Official Gazette, to exercise or perform, in such circumstances and under such conditions, if any, as may be specified in the notification the powers or duties of the competent authority under any provision of these rules ;

(c) “Court” means the principal civil court of original jurisdiction in the district in which the property is situated ;

(d) “Person interested” shall have the same meaning as in the Explanation to section 30 of the Act.

3. Power to require delivery of possession of property :—Whenever any property is requisitioned, the competent authority may by order require the owner or person in possession of the property to deliver possession thereof, after, removing therefrom any furniture or other articles, to such person and within such time as may be specified in the order.

4. Procedure for taking possession :—Where any person either remains in possession of any requisitioned property or fails to remove therefrom any furniture or other articles belonging to him in contravention of any order of requisitioning, the competent authority may, subject to the provisions of rule 18, enter into or take possession of the property and while taking possession of the property, the competent authority shall make, in the presence of two witnesses, an inventory of the furniture and other articles found therein and after giving not less than three days' notice for removing such furniture or other articles and after proclamation in such manner as that authority considers sufficient, may dispose of such furniture and other articles by public auction. The sale proceeds, if any, shall, after deducting the expenses of the sale, be deposited in the Court for payment to such person or persons as are entitled to receive the same.

5. Use of requisitioned property :—A property requisitioned for any of the purposes specified in sub-section (1) of section 29 of the Act may be used for any one or more of the other purposes specified in that sub-section.

6. Repairs to requisitioned property :—(1) The competent authority may, by order in writing, require any person interested to execute such repairs to the property (being repairs which are necessary and are usually made by owners of properties in the locality in which the requisitioned property is situated) and within such time as may be specified in the order, and if the person interested fails to execute any repairs in pursuance of such order, the competent authority may cause the repairs specified in the order to be executed and the expenses of such repairs shall be deducted from the compensation payable to him so however that the amount to be deducted shall in no case exceed the compensation payable for a month determined in accordance with clause (i) of section 30 of the Act.

(2) If the competent authority does not consider it in the public interest to allow entry into the property by the person interested or his agents or workmen for carrying out the requisite repairs, such repairs may be carried out by the competent authority and the expenses thereof shall be deducted from the compensation payable in respect of the property in accordance with sub-rule 1.

7. Release from requisition :—(1) Where any person to whom the possession of any property to be released from requisition, is to be given, fails to accept delivery of the property, or cannot be found and has no legal agent or other person empowered to accept delivery on his behalf, the competent authority shall cause a notice declaring that the property is released from requisition, to be served by registered post, at the last known address of such person and a copy of such notice shall at the same time be fixed on some conspicuous part of the property and a purport of the notice shall also be proclaimed by beat of drum or otherwise as the competent authority may consider sufficient. Such property shall cease to be subject to requisition

on and from the date of such publication and shall be deemed to have been delivered to the person entitled to the possession thereof and the Central Government shall not be liable for any compensation or other claim in respect of the property for any period after the said date.

(2) Where any requisitioned property or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was requisitioned by reason of fire, earthquake, tempest, flood or violence of any army or of a mob or other irresistible force, the property or any such part thereof, shall, at the option of the competent authority, be deemed to have been released from requisition and the Central Government shall, not be liable to restore the same in as good a condition as it was at the time of requisition.

8. Compensation :—The competent authority shall, as soon as may be after the property has been requisitioned, release from requisition or acquired, as the case may be, determine the compensation payable under section 30 or section 37 of the Act and shall also apportion it where necessary among the persons known or believed to be interested in the property of whom or of whose claim to compensation he has information. Such determination shall be communicated by the competent authority to the person or persons in whose favour the determination has been made.

9. Application for arbitration :—1. A person aggrieved by the amount of compensation determined by the competent authority shall, within thirty days of the receipt of the communication of such determination, make an application in writing to the competent authority for referring the matter to an arbitrator stating therein the reasons for his being aggrieved by the amount of compensation so determined.

2. Where no such application is made within the period of thirty days aforesaid and the amount of compensation as determined by the competent authority has not been accepted by the person or persons in whose favour the determination has been made, or where there is dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, the competent authority may deposit the amount with the court.

10. Appointment of arbitrator :—(1) On receipt of the application for reference to arbitration or where there is a dispute as to the title to receive the compensation or as to the apportionment of the amount thereof, the competent authority shall appoint as arbitrator a person who is qualified under clauses (2) of article 217 of the Constitution for appointment as a Judge of a High Court.

(2) Any such arbitrator shall complete the arbitration proceedings and give his award within four months :

Provided that the Central Government may, if it thinks fit, enlarge the period of making the award whether the time for making the award has expired or not.

11. Change of arbitrator :—Where before an arbitrator is able to finish his arbitration proceedings and make his award, a new arbitrator is appointed, the new arbitrator may deal with the evidence taken down by his predecessor.

as if such evidence had been taken down by him and may proceed with the arbitration proceedings from the stage at which his predecessor left it.

12. Arbitrator to have certain powers of civil courts :—The arbitrator shall have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of any document ;
- (c) reception of evidence on affidavits ;
- (d) requisitioning any public record from any court or office ;
- (e) issuing commissions for examination of witness.

13. The Award :—After taking into consideration matters with regard to the reference and after making such enquiry as the arbitrator may consider necessary and just, arbitrator shall make in writing and sign the award, setting forth the grounds for his decision of the amount of compensation which in his opinion should be allowed for the property and of the apportionment of the said compensation among all persons known to be interested in the property. The arbitrator shall at the same time deliver or send by registered post to all parties to the reference and to the competent authority a copy each of the award together with the grounds on which the award is based.

14. Costs :—(1) The award shall also state the amount of costs incurred by each party in the proceedings.

(2) Where the compensation determined by the arbitrator does not exceed the sum offered by the competent authority, the person interested shall be directed to bear his own costs and to pay as well the costs of the competent authority.

(3) Where the compensation determined by the arbitrator is not less than the amount claimed by the person interested and it is proved that the person interested made a similar claim in the inquiry preceding the competent authority's determination, the competent authority shall be directed to bear his own costs as well as those of the person interested.

(4) Subject as aforesaid, the apportionment of costs shall be in the discretion of the arbitrator.

(5) Where the costs of the competent authority have been ordered to be paid by the person interested, the competent authority may deduct the amount of such costs from the compensation amount payable to such person.

15. Payment :—(1) The compensation determined in accordance with clause (i) of section 30 of the Act shall be payable on the expiry of every three months in respect of a building or an urban land and on the expiry of every six months in respect of rural land.

(2) Where in the opinion of the competent authority there is likely to be delay in determination of the compensation or where the person interested is aggrieved by the amount of compensation determined by the competent authority, the competent authority may, at his discretion, make "on account"

payment after taking such security as that authority thinks fit, up to eighty per cent of the amount which in his opinion is likely to be determined as compensation and such "on account" payment as relates to compensation referred to in sub-rule (1) shall, as far as may be, be made in accordance with the provisions of that sub-rule.

16. Service of notices and orders :—(1) Save as otherwise provided in Chapter VI of the Act or in these rules, every notice or order issued or made under that Chapter or these rules shall,—

- (a) in the case of any notice or order of a general nature or affecting a class of persons, be published in the Official Gazette ; and
- (b) in the case of any notice or order affecting an individual corporation or firm, be served in the manner provided for the service of summons in Rule 2 of Order XXIX or Rule 3 of Order XXX, as the case may be, in the First Schedule of the Code of Civil Procedure, 1908 (5 of 1908) ;
- (c) in the case of any notice or order affecting an individual person (not being a corporation or a firm), be served on such person—
 - (i) by delivering or tendering it to that person ; or
 - (ii) if it cannot be so delivered or tendered, by delivering or tendering it to any officer of such person or any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for again ; or failing service by these means ;
 - (iii) by registered post.

(2) When the ownership of the property is in dispute or where the person interested in the property are not readily traceable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in the Official Gazette, and where possible, by affixing a copy thereof on any conspicuous part of the property to which it relates.

17. Court deposits :—If any money is deposited in court under these rules, the court shall deal with it in the manner laid down in section 32 and 33 of the Land Acquisition Act, 1894 (1 of 1894).

18. Inspection of property :—The competent authority shall not, as far as possible, in exercise of the powers conferred by sections 32 and 33 of the Act, enter upon any property after sunset or before sunrise.

PART II

CHAPTER XVI-A

THE DEFENCE OF INDIA ACT, 1971

NO. 42 OF 1971

*President's assent obtained and published in Gazette of India
Ext., dt. 4-12-71.*

(Extracts)

An Act to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith.

WHEREAS the President has declared by Proclamation under clause (1) of article 352 of the Constitution that a grave emergency exists whereby the security of India is threatened by external aggression ;

AND WHEREAS it is necessary to provide for special measures to ensure the public safety and interest, the defence of India and civil defence, and for the trial of certain offences and for matters connected therewith ;

Be it, therefore, enacted by Parliament in the Twenty-second Year of the Republic of India as follows :—

CHAPTER I

Preliminary

1. **Short title, extent, application, duration and savings :—**(1) This Act may be called the Defence of India Act, 1971.

(2) It extends to the whole of India and it applies also—

- (a) to citizens of India outside India ;
- (b) to persons in the service of the Government, wherever they may be ;
- (c) in respect of the regulation and discipline of the naval, military and air forces or any other armed forces of the Union, to members of, and persons attached to, employed with, or following, those forces, wherever they may be ;
- (d) to, and to persons on, ships and aircraft registered in India, wherever they may be.

(3) It shall come into force at once and shall remain in force during the period of operation of the Proclamation of Emergency and for a period of six months thereafter, but its expiry under the operation of this sub-section shall not affect—

- (a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or

- (b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or
 - (c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, or
 - (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

2. Definitions :—In this Act, unless the context otherwise requires,—

- (a) “civil defence” has the same meaning as in clause (a) of section 2 of the Civil Defence Act, 1968 ;
- (b) “enemy” means—
 - (i) any person or country committing external aggression against India ;
 - (ii) any person belonging to a country committing such aggression ;
 - (iii) such other country as may be declared by the Central Government to be assisting the country committing such aggression ;
 - (iv) any person belonging to such other country ;
- (c) “enemy territory” means—
 - (i) any area which is under the sovereignty of a country referred to in sub-clause (i), or a country referred to in sub-clause (iii), of clause (b) of this section ;
 - (ii) any area which the Central Government may, by notification in the Official Gazette, specify to be enemy territory for the purposes of this Act or any rule made thereunder ;
- (d) “military operations” means the operations of the Armed Forces of the Union ;
- (e) “occupied territory” means any territory of India which is for the time being in the occupation of a country referred to in sub-clause (i), or a country referred to in sub-clause (iii), of clause (b) of this section ;
- (f) “prescribed” means prescribed by rules made under this Act ;
- (g) “Proclamation of Emergency” means the Proclamation issued under clause (1) of article 352 of the Constitution on the 3rd day of December, 1971.

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CHAPTER II

Emergency Powers

- 3. Power to make rules :—**(1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or

expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, and may empower any authority to make orders providing for, all or any of the following matters, namely :—

* * * *

- (23) the taking over by the Central Government or the State Government, for a limited period, of the management of any property (including any undertaking) relating to supplies and services essential to the life of the community ;

* * * *

- (31) the requisitioning and acquisition of any movable property ; and the principles on which and the manner in which compensation shall be determined and given in respect of such requisitioning or acquisition ;

* * * *

CHAPTER V

Requisitioning and Acquisition of Immovable Property

23. Requisitioning of immovable property :—(1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India, civil defence, public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning :

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

24. Payment of compensation :—Whenever in pursuance of section 23, the Central Government or the State Government, as the case may be, requisitions any immovable property, there shall be paid to the persons

interested compensation the amount of which shall be determined by taking into consideration the following, namely :—

- (i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality ;
- (ii) if in consequence of the requisition of the property the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ;
- (iii) such sum or sums, if any, as may be found necessary to compensate the person interested for damage caused to the property on entry after requisition or during the period of requisition, other than normal wear and tear :

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine :

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator

Explanation.—In this section and in section 31, the expression “person interested” in relation to any property includes all persons claiming or entitled to claim an interest in the compensation payable on account of the requisitioning or acquisition of that property under this Act.

25. Power to obtain information and give direction :—The Central Government or the State Government, as the case may be, may, with a view to requisitioning any property under section 23 or determining the compensation payable under section 24, by order—

- (a) require any person to furnish to the authority mentioned therein such information in his possession relating to any property as may be specified ;
- (b) direct that the owner, occupier or the person in possession of the property shall not, without the permission of Government, dispose of it or where it is a building, structurally alter it till the expiry of such period as may be specified in the order.

26. Power of entry into, and inspection of, property, etc. :—Any person authorised in this behalf by the Central Government or the State Government, as the case may be, may enter into any immovable property and inspect such property for the purpose of determining whether, and if so in what manner, an order under section 23 should be made in relation to such property or with a view to securing compliance with any order made under that section.

27. Eviction from requisitioned property :—(1) Any person remaining in possession of any requisitioned property in contravention of any order made under section 23 may be summarily evicted from the property by any

officer empowered in this behalf by the Central Government or the State Government, as the case may be.

(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

28. Penalty for contravention of any order regarding requisitioning :

—If any person contravenes any order made under section 23 or section 25, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

29. Release from requisition :—(1) Where any property requisitioned under section 23 is to be released from such requisition, the Government by which or under whose authority the property was requisitioned or any person generally or specially authorised by it in this behalf may, after such inquiry, if any, as it or he may in any case, consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person who appears to the Government or, as the case may be, the person authorised as aforesaid, to be entitled to the possession of the property at the time such order is made.

(2) The delivery of possession of the property to the person specified in the order under sub-section (1) shall be a full discharge of the Government from all liabilities in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is delivered.

30. Acquisition of requisitioned property :—(1) Any immovable property which has been requisitioned under section 23 may, in the manner hereinafter provided, be acquired in the circumstances and by the Government specified below, namely :—

(a) where any works have, during the period of requisition, been constructed on, in or over the property wholly or partly at the expense of any Government, the property may be acquired by that Government if it decides that the value of or the right to use, such works shall, by means of the acquisition of the property, be preserved or secured for the purposes of any Government, or

(b) where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at that time, the property may be acquired by that Government.

(2) When any Government as aforesaid decides to acquire any immovable property, it shall serve on the owner thereof or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official Gazette, a notice stating that the Government has decided to acquire it in pursuance of this section :

(3) Where a notice of acquisition is served on the owner of the property or is published in the Official Gazette under sub-section (2), then, at the

beginning of the day on which the notice is so served or published, the property shall vest in the Government free from any mortgage, pledge, lien or other similar encumbrances and the period of requisition thereof shall come to an end.

(4) Any decision or determination of a Government under sub-section (1) shall be final, and shall not be called in question in any court.

(5) For the purposes of this section, "works" includes every description of buildings, structures and improvements of the property.

31. Compensation for acquisition of requisitioned property :—(1) The compensation payable for the acquisition of any property under section 30 shall be the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was as the time of requisitioning and been sold on the date of acquisition.

(2) Where any person interested is aggrieved by the amount of compensation determined in accordance with sub-section (1), he may make an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator appointed in this behalf by the Central Government or the State Government, and the amount of compensation to be paid shall be such as may be determined by the arbitrator in accordance with sub-section (1).

(3) The provisions of section 25 and section 26 shall apply in relation to the acquisition of any property or the determination of compensation for such acquisition as they apply in relation to the requisitioning of any property or the determination of compensation for such requisitioning.

(4) Where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and his decision thereon shall be final.

32. Power to make rules :—(1) The Central Government or the State Government as the case may be, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe

(a) the procedure to be followed in arbitration proceedings under this Chapter ;

(b) the period within which the owner of any property or any other person interested in the amount of compensation may apply to the Government concerned for referring the matter to an arbitrator ;

(c) the principles to be followed in apportioning the costs of proceedings before the arbitrator ;

(d) the method of payment of compensation ;

(e) the manner of service of notices and orders ;

(f) any other matter which has to be, or may be, prescribed.

33. Certain properties requisitioned under previous law to be deemed to be requisitioned under this Chapter :—Any property referred to in sub-section (1) of section 25 of the Requisitioning and Acquisition of Immó-

vable Property Act, 1952; 30 of 1952, which continued to be subject to requisition under the said Act and has not, immediately before the commencement of this Act, been released from requisitioning shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be the property requisitioned under sub-section (1) of section 23 if such property is, in the opinion of the Central Government, now required for any of the purposes specified in that sub-section :

Provided that—

- (a) all determinations, agreements or awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Act and in force immediately before such commencement, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period after such commencement ;
- (b) anything done or deemed to have been done or any action taken or deemed to have been taken (including any orders, notifications or rules made or issued or deemed to have been made or issued) under the Requisitioning and Acquisition of Immovable Property Act, 1952, (30 of 1952), shall, in so far as it is not inconsistent with the provisions of this Chapter or any rules or orders made thereunder, be deemed to have been done or taken under this Chapter.

CHAPTER VI

Supplemental

34. Power to delegate :—(1) The Central Government may, by order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also—

- (a) by any officer or authority subordinate to the Central Government, or
- (b) whether or not the power or duty relates to a matter with respect to which a State Legislature has power to make laws, by any State Government or by any officer or authority subordinate to such Government, or
- (c) by any other authority.

(2) The State Government may, by order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed on the State Government or which, being by this Act or any such rule conferred or imposed on the Central Government has been directed under sub-section (1) to be exercised or discharged by the State Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority not being (except in the case of a Union territory) an officer or authority subordinate to the Central Government.

(3) The Government of Assam may, by order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed on it shall, in relation to the autonomous State of Meghalaya, be exercised or discharged in such circumstances and under such conditions, if any, as may be specified in the direction by the Government of Meghalaya or by any officer or authority subordinate to that Government.

35. Rules to be laid before Houses of Parliament :—Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

36. Jurisdiction of ordinary courts :—(1) Except as may be provided in this Act or in any rule made thereunder or in any order made under any such rule by the Central Government or the State Government or by any officer not below the rank of Collector empowered under sub-section (1) or sub-section (2) of section 34 to make such order, the ordinary criminal and civil courts shall continue to exercise jurisdiction.

(2) For the removal of doubts, it is hereby declared that any provision in any such rule or order as aforesaid to the effect that the decision of any authority not being a court shall be final or conclusive shall be a sufficient excepting provision within the meaning of sub-section (1).

37. Effect of Act and rules, etc., inconsistent with other enactments :—The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

38. Ordinary avocations of life to be interfered with as little as possible :—Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence.

39. Savings as to orders :—(1) No order made in exercise of any power conferred by or under this Act shall be called in question in any court.

(2) When an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

40. Protection of action taken under the Act :—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder or any orders issued under any such rule.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rule made thereunder or any order issued under any such rule.

Notes

History of Legislation :—The history of this Act is specially important because during its regime a new and free State is born viz., Bangladesh formerly known as East Pakistan. The reign of terror and brutality unleashed by the Pakistan Government in this part of their territory in March 1971 gave rise to revolution as a reaction which the Pakistani Military Junta having failed to crush, attacked India and declared war against India on 3rd Dec., 1971. At once an Emergency was declared in India and this Act was passed on that very date and published in the Gazette of India; Extraordinary, on 4th Dec., 1971. The Indian Army in collaboration with the patriotic revolutionary army of Bangladesh wrought havoc on the enemy who capitulated with about a million soldiers only after 14 days of war. Thereafter Sk. Mujibar Rehman the leader of Bangladesh was released after the fall of General Yahya Khan, the then President of Pakistan and Bangladesh was declared independent.

The Act :—Requisitioning and acquisition of immovable properties are governed by sections 23 to 33 of Chapter V of the Defence of India Act, No. 42 of 1971. The rule making power in this respect, is given by S. 32 in the said Act. But no rules are as yet framed. Whereas requisitioning and acquisition of movable properties are governed by Rules 96 to 106 in Part XI of the D. I. Rules 1971 framed under S. 3 (31) of the Act. These rules are almost similar to those of D. I. Rules No. 107 to 117 of Part XI of D. I. Rules of 1962 and so they are not reproduced here. So far as immovable properties are concerned, they were governed by the Defence of India (Requisitioning and Acquisition of Immovable Property) Rules, 1962 framed under the D. I. Act, 1962. The Defence of India Act, 1962 expired on 10th July, 1968, six months after the date of revocation of the Proclamation of Emergency made on 10th Jany., 1968.

Section 30 :—It provides for acquisition of requisitioned immovable properties only on two grounds described in clauses (a) and (b) therein. These provisions are similar to those of the D. I. Act, 1962 and it has already been discussed in previous chapters of this part that the validity of these two clauses are doubted as, these are *prima facie* not public purposes, nor military purposes under the Act.

Section 31 :—Section 23 of the Land Acquisition Act (1 of 1894) has not been made applicable. The compensation is to be paid on the basis of valuation prevailing on the date of acquisition but on the basis of condition prevailing on the date of requisition. This is an anomalous and ambiguous provision. Supposing a land containing a huge tank is requisitioned at a date when its valuation is, say Rs. 1,000/- per bigha. This land was converted into an aerodrome for military purposes and was acquired, say after

6 years. There is no tank now. Present valuation of that land would be say about Rs. 5,000/- per bigha. Is the owner to be paid on the basis of tank land @ 1,000/- per bigha ? If so, then the principle of paying compensation on the basis of most advantageous and lucrative use to which the land could be put, is thrown to the wind and the owner is deprived of the great part of its capital value. Besides it would be an uphill task for everybody concerned to find out the exact 'condition' and its valuation as on the date of requisition after long years when the acquisition took place. It would have been more proper if the costs of constructions of the structures erected or improvements made on the land are deducted from the valuation prevailing on the date of acquisition, or, if the valuation of the structures as on the date of the acquisition is deducted from the total value of the said property on the said date of acquisition.

Section 32 :—No rules are as yet framed prescribing the procedures for appeal, period of limitation and jurisdictions etc.

Section 33 :—All requisitions made under section 25 of the Requisitioning and Acquisition of Immovable Property Act 30 of 1952 and in which there has been no de-requisition or award or agreement made as to compensation, continue and be deemed to be requisitioned under section 23 (1) of this Act.

There is no mention of the word 'acquisition' specifically in the section but it seems that Cl. (b) of this section may cover acquisitions made under previous Act in which there is yet no award or agreement made and that in so far as the provisions of the previous Act concerned are not inconsistent with those of this Act, such acquisitions shall be deemed to have been made under this Act. But if the provisions of the previous Act under which a property is acquired after requisition, is inconsistent with this Act, then it is the previous Act that will apply, contrary to the principles laid down in cl. (a) of this Section.

PART II

CHAPTER XVII

THE REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY (AMENDMENT) ACT 1963, (48 of 1963)

(Summary)

This amendment was made on 14-12-63 substituting the whole of sub-sec. (3) of sec. 1 changing the word 'twelve' in the 1st line to 'Six'. In other words the Act of 1952 would have remained in force for twelve years prior to 1958 Amendment Act (1 of 1958) but since 1958 it would remain in force for six years. Now by Amendment Act of 1963 it will cease to have effect on 14-3-1970.

Section 3 :—The requisitioning of land or property for public purpose may be either for the purposes of the Union or for the purposes of a State.

If it is for purpose of the Union, the Union Executive and in case of purpose of the State, the State Government has the power to so requisition, (a).

In view of Arts. 162 and 73 of the Constitution all executive functions relating to diplomatic, consular and trade representations can only be undertaken by the Union Government and that the exercise of power under sec. 6 (4) (a) of the Bombay Land Acquisition Act by the State Government is illegal, (a). If no opportunity is given to the person whose house is requisitioned, of appealing and stating his case, the requisitioning authority must be deemed to have acted without jurisdiction, (b).

Section 6 :—A power to de-requisition property includes a power to de-requisition any part thereof so long as such portion can be severed without affecting the nature and value of the property, (c). Where there was a requisition and subsequently the property was acquisitioned resulting in payment of compensation according to the award passed thereon but meanwhile the State Govt., purporting to exercise appellate powers passed an order vacating the requisition order itself and directing refund of compensation. It was held that the order was illegal, (d). If the original purpose of requisition under R 75-A ceased to exist, the State Government though delegated with power under S. 17 of Act 30 of 1952 which continued requisition, cannot acquire it for other purposes, under other Acts instead of de-requisitioning it, (e).

Section 7 :—It is the Central Government that can call upon the owner of the property to show cause. When the power to acquire a property exist under two different Acts, and the Government resorts to one Act rather than the other, it is not evidence of *mala fides*, (f).

Requisitioning of a house can be for his benefit who is already in possession as a tenant. The order of requisition effectuates a continuance of possession, (g).

Section 8 :—State purposes, Union purposes and Government purposes must be treated as public purposes, (h). There can be no real Government purpose unless the purpose benefits the members of the community at large who are governed by that Government.

Interest on Compensation :—In *Balai Lal Pal v. The State of West Bengal* (i), it was held that the arbitrator appointed under Sec. 8 (1) (b) of this Act (XXX of 1952) is quite competent to award interest on compensation assessed under the said Act, although the claimant has no legal right to claim interest but which is based on consideration of equity and it is entirely within the

(a) *Ali Gulshan v. The State of Bombay*, A. I. R. 1953, Bom. 337.

(b) *Pannalal v. State of Delhi*, A. I. R. 1954, Punj. 251 distinguishing, A. I. R. 1952 Cal. 65.

(c) *Kai Kushroo Kangra v. Union of India*, A. I. R. 1955 N. U. C. Bom. 4829.

(d) *Nader Shah v. State of Assam*, A. I. R. 1960, Assam 18.

(e) *Dhone Gopal v. Secretary, Land Rev.*, A. I. R. 1966 Cal. 348.

(f) *Lady Dinbai Dinshaw v. The Dominion of India*, A. I. R. 1951 Bom. 72.

(g) *Pannalal v. State of Delhi*, A. I. R. 1954, Punj. 251.

(h) *Satya Charan Sur v. State of West Bengal*, 63 C. W. N. 325.

(i) *Bolai Lal Pal v. The State of West Bengal*, 70 C. W. N. 363 (D. B.).

discretion of the court to allow or reject that claim. Interest *pendente lite* can also be awarded, (j).

Section 10 :—Any person aggrieved by an order of requisition under section 3 (v) is entitled to prefer an appeal to the Central Government. This is an appeal at administrative level and the order of the Central Government is final. Only further remedy that can be resorted to is the writ petition under Arts. 32 and 226 of the Constitution of India.

Section 24 :—When a property has been requisitioned before the Act, Sec. 24 (2) makes the order of requisition as an order under sec. 3 of the Act and the proviso (b) provides that the Act should be deemed to have been in force on the day when original requisition was made.

Section 25 :—Special provision as to certain requisitions under Act 51 of 1962—

(Inserted by S. 3 of the Requisitioning and Acquisition of Immovable Property Amendment Act No. 31 of 1968. See hereafter under the said Act.)

PART II

CHAPTER XVIII

THE REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY (AMENDMENT) ACT, No 31 of 1968

(The following Act of Parliament received the assent of President on the 9th August, 1968 and was published in the Gazette of India, Ext. Part II, Sec. 1, No. 445 dated August 12, 1968).

An Act further to amend the Requisitioning and Acquisition of Immovable Property Act, 1952

Be it enacted by Parliament in the Nineteenth year of the Republic of India as follows :—

1. **Short title** :—This Act may be called the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1968.

Notes

“The Defence of India Act 1962 expired on 10th July, 1968, that is, six months from 10th January, 1968, the date of revocation of the Proclamation of Emergency. A large number of immovable properties have been requisitioned under the Defence of India Act 1962. The cost of acquisition of these properties will be prohibitive. On many of these requisitioned land valuable structures have been put up. In the majority of the cases, it has not been possible to vacate the lands and hand them over to the owners. It is therefore considered necessary that the properties requisitioned under the Act should continue to be subject to requisitions even after the expiry of the Act.

For this purpose it is proposed to amend the Requisitioning and Acquisition of Immovable Property Act 1952". (See the Objects and Reasons in Gazette of India Ext. dated 10th August, 1968).

2. Amendment of Section 8 :—In section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952) (hereinafter referred to as the principal Act) for sub-section (3) the following sub-section shall be substituted, namely :—

"(3) The compensation payable for the acquisition of any property under Section 7 shall be the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition".

3. Insertion of new Section 25 :—In the principal Act, after section 24, the following Section shall be inserted and shall be deemed to have been inserted with effect on and from the 10th day of January, 1968, namely :—

"25 Special provision as to certain requisition under Act 51 of 1962 :—

(1) Notwithstanding anything contained in this Act, any immovable property requisitioned by the Central Government or by any officer or authority to whom powers in this behalf have been delegated by that Government under the Defence of India Act, and the rules made thereunder (including any immovable property deemed to have been requisitioned under the said Act) which has not been released from such requisition before the 10th January, 1968, shall as from that date, be deemed to have been requisitioned by the competent authority under the provisions of this Act for the purpose for which such property was held immediately before the said date and all the provisions of this Act shall apply accordingly :

Provided that :—

(a) all determinations, agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the said date and in force immediately before the said date, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition as from said date ;

(b) anything done or any action taken (including any orders, notification or rules made or issued) by the Central Government or by any officer or authority to whom powers in this behalf have been delegated by that Government, in exercise of the powers conferred by or under chapter VI of the Defence of India Act, 1962 shall, in so far as it is not inconsistent with the provisions of this Act be deemed to have been done or taken in the exercise the powers conferred by or under this Act as if this section was in force on the date on which such thing was done or action was taken.

(2) Same as otherwise provided in sub-section (1), the provisions of the Defence of India, Act, 1962, and the rules made thereunder, in so far as these provisions relate to the requisitioning of any such immovable property as is referred to in sub-section (1), shall as from the 10th January, 1968, cease to operate except as respects things done or omitted to be done before such cesser and section 6 of the General Clauses Act, 1897 (10 of 1897)

shall apply upon such cesser of operation as if such cesser were a repeal of an enactment by a Central Act."

4. **Repeal and Saving :—**(1) The Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance, 1968 (Ord. 4 of 1968) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act.

Notes

Period of requisition not mentioned in order :—Section 29 (1) of D. I. Act 1962 does not require that the period should be indicated in an order requisitioning the plot for defence purposes. The duration of this period is clearly indicated in sections 1 (3) and 29 (3) of the D. I. Act 1962 read with S. 25 of the Requisition and Acquisition of Immovable property Act (1952), (a).

PART II

CHAPTER XIX

THE REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY (AMENDMENT) ACT No. 1 of 1970 (11-3-1970)

An Act further to amend the Requisitioning and Acquisition of Immovable Property Act, 1952

Be it enacted by Parliament in the Twenty-first year of the Republic of India as follows :—

1 **Short title :—**This Act may be called the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970.

2 **Amendment of section 1 :—**In Section 1 of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1952 (hereinafter referred to as the principal Act), sub-section (3) shall be omitted.

3 **Amendment of section 6 :—**In Section 6 of the principal Act (a) after sub-section (1), the following sub-section shall be inserted namely :—

"(1A) Notwithstanding anything contained in sub-section (1), the Central Government shall release from requisition, (a) any property requisitioned or deemed to be requisitioned under this Act before the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970, on or before the expiry of a period of three years, from such commencement ;

(b) any property requisitioned under this Act after such commencement on or before the expiry of a period of three years from the date on which possession of such property was surrendered or delivered to, or taken by the competent authority under Section 4, unless such property is acquired under section 7 within the period of three years aforesaid."

(c) In sub-section (2), after the words "released from requisition". the words, brackets, figures and letters "under sub-section (1) or sub-section (1A), shall be inserted.

PART II

CHAPTER XX

THE INDIAN RAILWAYS ACT, IX OF 1890

Sections 7—13

7. Authority of railway administration to execute all necessary works :—

(1) Subject to the provisions of this Act, and in the case of immovable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may for the purpose of constructing a railway or the accommodation or other works connected therewith, and, notwithstanding anything in order enactment for the time being in force,—

- (a) make or construct in, upon, across, under, or over, any lands, or any streets, hills, valleys, roads, railways, or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes, or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, "lines of railways", ways, passages, conduits, drains, piers, cuttings, and fences as the railway administration thinks proper ;
- (b) alter the course of any rivers, brooks, streams or courses for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under, them and divert or alter as well temporarily as permanently, the course of any rivers, brooks, streams or watercourses, or any roads, streets, or ways, or raise or sink the level thereof, in order to carry them more conveniently over, or by the side of the railway as the railway administration thinks proper ;
- (c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway ;

- (d) erect and construct such houses, warehouses, offices, and other buildings, and such yards, stations, wharves, engines, machinery, apparatus, and other works and conveniences as the railway administration thinks proper ;
 - (e) alter, repair, or discontinue such buildings, works and conveniences as aforesaid or any of them, and substitute other in their stead ; and
 - (f) do all other acts necessary for making, maintaining, altering or repairing and using the railway.
- (2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the Central Government.

8. Alteration of pipes, wires and drains :—A railway administration may for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water or compressed air, or the position of any electric wire, or of drain not being a main drain :

Provided that—

- (a) when the railway administration desires to alter the position of any pipe, wire or drain, it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority or company having control over the pipe, wire, drain, or, when the pipe, wire or drain is not under the control of a local authority, or company, to the person under whose control the pipe, wire or drain is ;
- (b) a local authority, company, or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing, during the execution of the work, the supply of gas, water, compressed air, or electricity or the maintenance of the drainage, as the case may be.

8A. Protection for Government property :—Nothing in the two last preceding section shall authorise the doing of anything on or to any works, lands, or buildings vested in, or in the possession of, the Central Government without the consent of that Government, or the doing of anything on or to any works, lands or buildings vested in, or in the possession of a State without the consent of the State Government.

9. Temporary entry upon land for repairing or preventing accident :—
(1) The Central Government may authorize any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment, or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works as may be necessary for the purpose.

(2) In case of necessity the railway administration may enter upon the lands, and do the works aforesaid without having obtained the previous sanction of the Central Government, but in such a case shall, within seventy-two hours after such entry, make a report to the Central Government,

specifying the nature of the accident or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administration by this sub-section shall cease and determine, if the Central Government, after considering the report, considers that the exercise of the power is not necessary for the public safety.

10. Payment of compensation for damage caused by lawful exercise of powers under sections 7, 8 or 9 :—(1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of the three last foregoing sections, and compensation shall be paid for any damage caused by the exercise thereof.

(2) A suit shall not lie to recover such compensation but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be, with the provisions, of sections 11 to 15, both inclusive, sections 18 to 34, both inclusive, and sections 53 and 54 of the Land Acquisition Act, 1894, and the provisions of sections 51 and 52 of that Act shall apply to the award of compensation.

11. Accommodation works :—(1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway namely :—

(a) such and so many convenient crossing, bridges, arches, culverts, and passages over, under, or by the sides of, or leading to or from, the railway as may, in the opinion of the State Government, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(b) all necessary arches, tunnels, culverts, drains, water-courses or other passages, over or under or by the side of the railway, of such dimensions as will, in the opinion of the State Government be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be.

(2) Subject to the other provisions of this Act, the works specified in clauses (a) and (b) of sub-section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(3) The foregoing provisions of this section are subject to the following provisions, namely :—

(a) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made ;

(b) save as hereinafter in this chapter provided, a railway administration shall not, except on the requisition of the State Government be compelled to defray the cost of executing any further or

additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic ;

- (c) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

(4) The State Government may appoint a time for the commencement of any work to be executed under sub-section (1), and if for fourteen days next after that time the railway administration fails to commence the work or having commenced it, fails to proceed diligently to execute it in a sufficient manner, the State Government may execute it and recover from the railway administration the cost incurred by him in the execution thereof.

12. Power for owner, occupier or local authority to cause additional accommodation works to be made :—If the owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the State Government or a local authority desires to construct a public road or other work across, under or over a railway, he or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorized by the Central Government.

13. Fences screens, gates, and bars :—The Central Government may require that, within a time to be specified in the requisition, or within such further time as he may appoint in this behalf,—

- (a) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith ;
- (b) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway ;
- (c) suitable gates, chains, bars, tiles, or hand rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level ;
- (d) persons be employed by a railway administration to open and shut such gates, chains, or bars.

PART II

CHAPTER XXI

THE INDIAN TELEGRAPH ACT, XIII OF 1885

Sections 16 and 18

16. Exercise of powers conferred by section 10 and disputes as to compensation in case of property other than that of a local authority :—(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If after the making of an order under sub-section (1), any person resists the exercise of these powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall on application for that purpose by either of disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deemed sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount ; and the District Judge, after giving notice to the parties, and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final :

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority from the person who has received the same.

18. Removal of trees interrupting telegraphic communication :—(1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deemed fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

CHAPTER XXII

THE INDIAN WORKS OF DEFENCE ACT, VII OF 1903

Preamble

An Act to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions, and for determining the amount of compensation to be made on account of such imposition.

Note :—The provisions of this Act are similar to those of the Land Acquisition Act, I of 1864.

16. In determining the amount of compensation the Collector shall be guided by the provisions contained in Sections 23 and 24.

CHAPTER XXIII

THE INDIAN ELECTRICITY ACT, IX OF 1910

Section 57

57. Amendment of the Land Acquisition Act, 1894 :—(1) In section 40, sub-section (1), clause (b), and section 41, sub-section (5), of the Land Acquisition Act, 1894, the term “work” shall be deemed to include electrical energy, supplied or to be supplied, by means of the work to be constructed.

(2) The State Government may, if it thinks fit, on the application of any person, not being a company, desirous of obtaining any land for the purposes of his undertaking, direct that he may acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner, and on the same conditions as it might be acquired if the person were a company.

CHAPTER XXIV

THE INDIAN TRAMWAYS ACT, XI OF 1886

Sections 6 and 7

6. Procedure for making order :—(1) The Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the Official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorizing the construction of the tramway.

(2) A notice shall be published with the draft stating that and objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may make an order accordingly.

(4) Every order authorizing the construction of a tramway shall be published in the Official Gazette in English, and in the other prescribed language or languages, if any ; and that publication shall be conclusive proof that the order has been made as required by this section.

7. Contents of order :—(1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say :—

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within the period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle ; and the limits of time within which, and the terms upon which the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle ;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes.

* * * * *

CHAPTER XXV

THE RE-SETTLEMENT OF DISPLACED PERSONS (Land Acquisition) ACT LX OF 1948

3. Notice of acquisition of land :—(1) Whenever it appears to the State Government that it is necessary or expedient to acquire speedily any land for the re-settlement of displaced persons, a notification to that effect shall be published in the Official Gazette stating the area and the boundaries of the land proposed to be acquired and the date on which such acquisition will be made and the competent authority shall cause public notice of the

substance of such notification to be given at convenient places on or near the land to be acquired.

* * * * *

5. Vesting and taking possession of land :—When a notice of acquisition is served or is published under Section 4, the land shall, vest absolutely in the State Government free from all encumbrances on the date the notice is so served or published in the Official Gazette.

* * * * *

7. Method of determining compensation :—Where any land has been acquired under this Act, there shall be paid compensation, amount of which shall be determined in the manner and in accordance with the principles hereinafter set out that is to say :—

- (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement ;
- (b) Where no such agreement can be reached, the State Government shall appoint as arbitrator a person qualified for the appointment as judge of a High Court ;
- (c) The State Government in any case, nominate a person having expert knowledge as to the nature and condition of the land acquired to assist the arbitrator and when such nomination is made the person to be compensated may also nominate an assessor for the said purpose.
- (d) At the commencement of the proceedings before the arbitrator, the State Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.
- (e) The arbitrator, in making his award shall have due regard to the provisions of sub-section (1) of Section 23 of the Land Acquisition Act (1 of 1894).

Provided that the market value referred to in clause *first* of sub-section (1) of section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice under section 3, or on the first day of September, 1939, with an addition of 40 per cent. whichever is less ;

Provided further that where such land has been held by the owner thereof under a purchase made before the first day of April, 1948, but after the first day of September, 1939, by a registered document, or a decree for pre-emption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land in the decree for pre-emption, as the case may be.

(2) The arbitrator shall, in awarding any compensation under this section apportion the amount thereof between such persons, if any as may appear to him to be entitled thereto.

(3) An appeal shall lie to the High Court from the award of the arbitrator appointed under this Act, and the decision of the High Court shall be final.

(4) Save as provided in the section nothing in any law for the time being in force shall apply to arbitrations under this section.

CHAPTER XXVI

THE SLUM AREAS (Improvement and Clearance) ACT, 1956 (Act 96 of 1956)

The following Act of Parliament received the assent of the President on the 29th December, 1956 and was published in Gazette of India, Extraordinary, Part II, Section 1, No. 80, dated the 31st December, 1956.

An Act to provide for the improvement and clearance of slum areas in certain Union territories and for the protection of tenants in such areas from eviction.

Be it enacted by Parliament in the seventh year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement :—**(1) This Act may be called the Slum Areas (Improvement and Clearance) Act 1956.

(2) It extends to all Union territories except the Union territories of the Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindevi Islands.

(3) It shall come into force in a Union territory on such date as the Central Government may, by notification in the Official Gazette appoint and different dates may be appointed for different Union territories.

Notes

Object :—The object of this Act according to the preamble is to provide for the improvement and clearance of slum areas in certain Union territories and for the protection of tenants in such areas. The rapid growth of population and overcrowding particularly in large cities have created bad slum areas. These slums are menace to the safety, health and morality of the citizens. The Act confers power for entering privately owned slums for the purpose of providing basic amenities such as water supply, privies etc., and it also confers powers for acquiring the slum areas and demolishing dilapidated houses and for payment of compensations.

The Act has come into force in the Union territory of Delhi from the 8th of February 1957 and in Tripura from the 1st of April, 1958.

2. Definition :—In this Act unless the context otherwise requires,—

- (a) "Administrator" means the Administrator of a Union territory.
- (b) "building" includes any structure or erection or any part of a building as so defined but does not include plant or machinery comprised in a building ;
- (c) "Competent Authority" means such officer or authority as the Administrator may, by notification in the Official Gazette, appoint as the competent authority for the purposes of this Act ;
- (d) "erection" in relation to a building includes extension, alteration or re-erection ;
- (e) "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth ;
- (f) "occupier" includes—
 - (a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable ;
 - (b) an owner in occupation of, or otherwise using his land or building ;
 - (c) a rent-free tenant of any land or building ;
 - (d) a licensee in occupation of any land or building ; and
 - (e) any person who is liable to pay to the owner damages for the use and occupation of any land or building ;
- (g) "owner" includes any person who is receiving or is entitled to receive the rent of any building or land whether on his own account or on behalf of himself and others or as agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant ;
- (h) "prescribed" means prescribed by rules made under this Act ; and
- (i) "slum clearance" means the clearance of any slum area by the demolition and removal of buildings therefrom.
- (j) "work of improvement" includes in relation to any building in a slum area the execution of any one or more of the following works, namely :—
 - (i) necessary repairs ;
 - (ii) structural alteration ;
 - (iii) provision of light points, water taps and bathing places ;
 - (iv) construction of drains, open or covered ;
 - (v) provision of latrines, including conversion of dry latrines into water-borne latrines ;
 - (vi) provision of additional or improved fixtures or fittings ;
 - (vii) opening up or paving of courtyards ;
 - (viii) removal of rubbish ; and
 - (ix) any other work including the demolition of any building or any part thereof which in the opinion of the competent authority is necessary for executing any of the works specified above ;

CHAPTER II

3. Declaration of slum areas :—(1) Where the competent authority upon report from any of its officers or other information in its possession is satisfied as respects any area that the buildings in that area—

(a) are in any respect unfit for human habitation ; or

(b) are by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, are detrimental to safety, health or morals, it may, by notification in the official Gazette, declare such area to be a slum area.

(2) In determining whether a building is unfit for human habitation for the purpose of this Act, regard shall be had to its condition in respect of the following matters, that is to say—

(a) repair ;

(b) stability ;

(c) freedom from damp ;

(d) natural light and air ;

(e) water supply ;

(f) drainage and sanitary conveniences ;

(g) facilities for storage, preparation and cooking of food and for the disposal of waste water,

and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters, that it is not reasonably suitable for occupation in that condition.

* * *

CHAPTER V

Acquisition of Land

12. Power of Central Government to acquire Land.—(1) Where on any representation from the competent authority it appears to the Central Government that, in order to enable the authority to execute any work of improvement in relation to any building in a slum area or to re-develop any clearance area, it is necessary that land within, adjoining or surrounded by any such area should be acquired, the Central Government may require the land by publishing in the Official Gazette a notice to the effect that the Central Government has decided to acquire the land in pursuance of this section :

Provided that, before publishing such notice, the Central Government may call upon the owner of, or any other person who, in the opinion of the Central Government, may be interested in such land to show cause why it should not be acquired ; and after considering the cause, if any, shown by the owner or any other person interested in the land, the Central Government may pass such order as it deems fit.

(2) When a notice as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notice is so published, vest absolutely in the Central Government free from all encumbrances.

Notes. For form of notice under section 12 (1) see form "c" appended to the Slum Areas (Improvement and Clearance) Rules 1957.

13. Land acquired by Central Government to be made available to the competent authority.—Where any land in a slum area or clearance area has been acquired under this Act the Central Government shall make the land available to the competent authority for the purpose of executing any work of improvement or carrying out any order of demolition or for the purpose of re-development :

Provided that where on any representation from the competent authority, the Central Government is satisfied that any such land or any portion thereof is unsuitable for the purposes mentioned in this section, the Central Government may use the land or allow it to be used for such other public purpose or purposes as it may deem fit.

14. Right to receive compensation.—Every person having any interest in any land acquired under this Act shall be entitled to receive from the Central Government compensation as provided hereafter in this Act.

15. Basis for determination of compensation.—(1) The amount payable as compensation in respect of any land acquired under this Act shall be an amount equal to sixty times the net average monthly income actually derived from such land during the period of five consecutive years immediately preceeding the date of publication of the notice referred to in section 12.

(2) The net average monthly income referred to in sub-section (1) shall be calculated in the manner and in accordance with the principles set out in the schedule.

(3) The competent authority shall after holding an inquiry in the prescribed manner determine in accordance with the provisions of sub-section (2) the net average monthly income actually derived from the land and publish a notice in the Official Gazette specifying the amount so determined and calling upon the owner of the land and every person interested therein to intimate to it before a date specified in the notice whether such owner or person agrees to the amount so determined and if he does not so agree, what amount he claims to be the net average monthly income actually derived from the land.

(4) Any person who does not agree to the amount of the net average monthly income determined by the competent authority under sub-section (3) and claims a sum in excess of that amount may prefer an appeal to the Administrator within thirty days from the date specified in the notice referred to in that sub-section.

(5) On appeal the Administrator shall, after hearing appellant determine the net average monthly income and his determination shall be final and shall not be questioned in any court of law.

(6) Where there is any building on the land in respect of which the net average monthly income has been determined, no separate compensation shall be paid in respect of such building.

Provided that where the owner of the land and the owner of the building on such land are different, the Competent Authority shall apportion the amount of compensation between the owner of the land and the owner of the building in the same proportion as the market price of the land bears to the market price of the building on the date of the acquisition.

16. *Apportionment of compensation.*—(1) Where several persons claim to be interested in the amount of compensation determined under section 15, the competent authority shall determine the persons who in its opinion are entitled to receive compensation and the amount payable to each of them.

(2) If any dispute arises as to the apportionment of compensation or any part thereof, or as to the persons to whom the same or any part thereof is payable, the competent authority may refer the dispute to the decision of the administrator ; and the administrator in deciding any such dispute shall follow, as far as may be, the provisions of Part III of the Land Acquisition Act, 1894 (1 of 1894).

17. *Payment of compensation or deposit of the same in Court.*—(1) After the amount of the compensation has been determined, the competent authority shall on behalf of the Central Government tender payment of and pay, the compensation to the persons entitled thereto.

(2) If the persons entitled to compensation do not consent to receive it, or if there be any dispute as to the title to receive compensation or as to the apportionment of it, the competent authority shall deposit the amount of the compensation in the court of the District Judge and that Court shall deal with the amount so deposited in the manner laid down in sections 32 and 33 of the Land Acquisition Act 1894 (1 of 1894).

18. *Powers of Competent Authority in relation to determination of compensation etc.*—(1) The competent authority may, for the purposes of determining the amount of compensation or apportionment thereof, require by order any person to furnish such information in his possession as may be specified in the order.

(2) The Competent Authority shall, while holding inquiry under section 15, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure 1908 (5 of 1908), in respect of the following matters, namely :—

- (a) Summoning and enforcing the attendance of any person and examining on oath ;
- (b) requiring the discovery and production of any document ;
- (c) reception of evidence on affidavits ;
- (d) requisitioning any public record from any court or office ;
- (e) issuing commissions for examination of witnesses.

PART III

CHAPTER I

Andhra Pradesh (1)

THE LAND ACQUISITION (ANDHRA PRADESH EXTENSION AND AMENDMENT) ACT, 1959

¹Act No. XX of 1959

An Act to extend the Land Acquisition Act, 1894, to certain areas in the State of Andhra Pradesh and further to amend it in its application to that State.

Be it enacted by the Legislature of the State of Andhra Pradesh in the Tenth year of the Republic of India as follows :

1. Short title, extent and commencement :—(1) This Act may be called The Land Acquisition (Andhra Pradesh Extension and Amendment Act, 1959.)

(2) It extends to the whole of the State of Andhra Pradesh.

(3) This section shall come into force at once, and the remaining provisions shall come into force on such date as the State Government may by notification in the Andhra Pradesh Gazette, appoint.

2. Definitions :—(1) In this Act—

(a) 'Land Acquisition Act, 1894' means the Land Acquisition Act, 1894(Central Act I of 1894), (with the subsequent statutory modifications thereto), as in force at the commencement of this Act in the territories of the State of Andhra Pradesh which, immediately before the 1st November, 1956, were comprised in the State of Andhra.

(b) 'transferred territories' means the territories specified in sub-section (1) of section 3 of the States Re-organisation Act, 1956 (Central Act XXXVII of 1956).

(2) The Madras General Clauses Act 1891 (Madras Act I of 1891), shall apply for the interpretation of this Act.

3. Extension of Central Act I of 1894 to transferred territories :—The Land Acquisition Act, 1894 (hereinafter referred to as the principal Act) as amended by Sections 4 to 8 (both inclusive), is hereby extended to, and shall be in force in the transferred territories.

4. Amendment of section I, Central Act I of 1894 :—In sub-section (2) of section 1 of the principal Act, after the expression "except the territories which, immediately before the 1st November, 1956, were comprised in Part B States", the expression "other than the territories specified in sub-section (1) of section 3 of the States Re-organisation Act, 1955 (Central Act XXXVII

¹ Received the assent of the President on 11th March, 1959. Published in the Andhra Pradesh Gazette, Part IV-B, Page 109, dated 19th March, 1959.

of 1956) (hereinafter referred to as the transferred territories)", shall be added.

5. Amendment of section 3, Central Act I of 1894 :—In clause (c) of section 3 of the principal Act, the following shall be added at the end namely,—

'and also includes a company or society registered or incorporated by or under any corresponding law in force in the transferred territories'.

6. Amendment of section 17, Central Act of 1894 :—In clause (b) (ii) (B) of sub-section (2) of section 17 of the principal Act, the following words, figures and brackets shall be added at the end, namely—

"the Andhra Pradesh (Telengana Area) Co-operative Society Act, 1952 (Act XVI of 1952), or".

7. Amendment of section 18, Central Act of 1894 :—For clause (b) of the proviso to sub-section (2) of section 18 of the principal Act, the following clause shall be substituted, namely,—

"(b) in other cases, within two months from the date of service of the notice from the Collector under section 12, sub-section (2)".

8. Amendment of section 45, Central Act I of 1894 :—In the proviso to sub-section (3) of section 45, for the words "and service of it may be proved by the production of the addressee's receipt", the following shall be substituted, namely,—

"and the notice shall be deemed to be served on such person on the date on which the notice sent by registered post will, in the usual course of post be received by the addressee".

9. Power to remove difficulties :—(1) If any difficulty arises in giving effect to the provisions of this Act, or of the principal Act as extended by this Act, in their application to the transferred territories, in consequence of the transition to the said provision from the corresponding provisions of the Act in force therein immediately before the commencement of this Act, the State Government may, by order in the Andhra Pradesh Gazette, make such adaptations or modifications of the said Act not affecting the substance or make such provisions as appear to them to be necessary or expedient for removing the difficulty :

Provided that the power conferred by this sub-section shall not be exercisable after the expiration of three years from the commencement of this Act.

(2) If any difficulty arises in giving effect to the provisions of this Act or of the principal Act as extended by this Act, otherwise than in relation to the transition from the provisions of the corresponding Act in force before the commencement of this Act, in their application to the transferred territories, the State Government may by order, make such provisions, not inconsistent with the purposes of this Act or of the principal Act as extended by this Act, as appear to them to be necessary or expedient for removing difficulty.

10. Repeal :—(1) The Land Acquisition Act (Hyderabad Act IX of 1309 Fasli), in so far as it applies to, and is in force in the transferred territories, is hereby repealed.

(2) Upon such repeal, the provisions of section 8 of the [Andhra Pradesh General Clauses Act, 1891 (Act I of 1891), shall apply : and for the removal

of doubts it is hereby declared that any proceeding commenced under the said Act and pending at the commencement of this Act before any officer, Court or other authority, shall be disposed of, in accordance with the provisions of the said Act as if the said Act continued in force and this Act had not been passed.

Andhra Pradesh (2)

**THE NAGARJUNASAGAR PROJECT (ACQUISITION OF LAND)
ACT, 1956**

(Act, No. XXXII of 1956)

An Act to provide for the acquisition of lands in the Nagarjunasagar Project area.

Whereas the execution of the Nagarjunasagar Project has been taken up in order to conserve and utilise to the best advantage the waters of the Krishna river :

AND WHEREAS it is necessary to acquire lands for the excavation of canals and distributories, construction of buildings and other works required for the said Project :

AND WHEREAS it is necessary in assessing the compensation to be paid for the lands acquired, to disregard speculative purchases made in the expectation of the execution of the said Project :

Be it enacted in the Seventh Year of the Republic of India as follows :

1. Short title, extent and commencement :—(1) This Act may be called the Nagarjunasagar Project (Acquisition of Land) Act, 1956.

(2) (a) It extends to the districts of Guntur, Kurnool, Nellore, Nalgonda and Khammam in the State of Andhra Pradesh.

(b) The Government may, by notification in the Andhra Pradesh Gazette extend all or any of the provisions of this Act to any other district in the said State on such date as they may appoint.

2. Definitions :—In this Act, unless the context otherwise requires,—

(1) "Government" means the State Government :

(2) "Project area" means the area to which this Act extends under clause (a) or clause (b) of sub-section (2) of section 1 :

(3) Acquisition of lands in Nagarjunasagar Project area.—

"project purpose" means any purpose connected with the Nagarjunasagar Project.

3. (1) The Government may acquire any land in the project area for a project purpose.

(2) The acquisition shall be made in accordance with the provisions of the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter in this section referred to as the said Act), subject to the following modifications :

(i) For section 11 of the said Act the following section shall be substituted, namely,—

11. "Enquiry and award by Collector :—On the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection if any, which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, into the market value of the land on the 1st July, 1953 and the value of any improvements to the land effected after that date and before the date of the publication of the notification under sub-section (1) of section 4, into the value of the land at the date of the publication of the notification under sub-section (1) of section 4, into respective interests of the persons claiming the compensation and shall make an award under his hand of—

- (i) the true area of the land ;
- (ii) the compensation which in his opinion should be allowed for the land ; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom, or of whose claims, he has information, whether or not they have respectively appeared before him."

(ii) after sub-clause (ii) of clause (b) of sub-section (2) of section 1 of the said Act, as amended by the Land Acquisition (Andhra Pradesh Amendment) Act, 1948 (Act XXI of 1948), the following shall be added namely—

"or

- (iii) for any purpose connected with the Nagarjunasagar Project the area to which the Nagarjunasagar Project (Acquisition Land) Act, 1956, extends."
- (iii) in sub-section (1) of section 23 of the said Act, for clause *first* the following clause shall be substituted, namely,—

"*first*, the market-value of the land on the 1st July, 1953 and the value of any improvements to the land effected after the date and before the date of the publication of the notification under sub-section (1) of section 4 or the market value of the land on the date of the publication of the said notification whichever is less."

Explanation.—The Government may, on the request of the land owner, agree to give in exchange any Government land the costs of which is, in their opinion, equal to the cost of the land acquired, or agree to pay the cost of a portion of the land acquired and for the remaining portion give Government land the cost of which is in their opinion equal to the amount due."

3-A. Application of Central Act I of 1894 for acquisition of land in certain project areas :—(1) In this section,—

- (a) 'Central Act' means the Land Acquisition Act, 1894 (Central Act I of 1894), which the subsequent statutory modification thereto as in force at the commencement of this Act in the territories of the State of Andhra Pradesh which, immediately before the 1st November, 1956, were comprised in the State of Andhra ;
- (b) 'Hyderabad Act' means the Land Acquisition Act (Hyderabad Act IX of 1309 F).

(2) Notwithstanding anything contained in sub-section (2) of section 1 of the Central Act and in section 1 of the Hyderabad Act, the Central Act as amended by section 3 shall and the Hyderabad Act shall not, apply to the acquisition of lands for project purposes in the districts of Nalgonda and Khammam.

4. Application of the Act to pending cases of acquisition :—The provisions of section 3 shall, so far as may be, apply also to every case in which proceedings have been started before the commencement of this Act, for the acquisition of any land in the project area for any project purpose :

Provided that no award has been made by the Collector under section 11 of the Land Acquisition Act, 1894 (Central Act 1 of 1894), or section 10 of the Land Acquisition Act (Hyderabad Act IX of 1309 F.) before such commencement.

Explanation.—In this section, the expressions ‘commencement of this Act’ and ‘before such commencement’ shall, in relation to the districts of Nalgonda and Khammam, mean the date on which the Nagarjunasagar Project (Acquisition of Land) (Andhra Pradesh Amendment) Act, 1959, comes into force.

5. Power to make Rules :—(1) The Government may, by notification in the Andhra Pradesh Gazette, make rules to carry out the purposes of this Act.

(2) All rules made under this section shall be laid for not less than fourteen days before the Legislative Assembly, as soon as may be after they are made, and shall be subject to such modifications whether by way of repeal or amendment, as that Assembly may make during the session in which they are so laid.

¹Andhra Pradesh (3)

THE ANDHRA PRADESH REQUISITION OF BUILDINGS ACT XI OF 1954

(30th June 1954)

An Act to provide for the requisitioning of buildings.

Whereas it is expedient to provide for the requisitioning of buildings in certain areas in the—²[State of Andhra Pradesh] : It is hereby enacted as follows :—

1. Short title, extent and commencement :—(1) This Act may be called ³[the Andhra Pradesh Requisitioning of Buildings Act, 1954].

¹ For statement of Objects and Reasons, see Andhra Pradesh Gazette Extraordinary of 12-5-54, Pt. IV-A, pages 165-167. The Act was extended to transferred territories (Telengana) areas by S. 3 of A. P. Requisitioning of Buildings Act XII of 1960.

² Substituted for words ‘State of Andhra’ by S. 4, *ibid*.

³ Substituted by A. P. Act XI of 1961.

(2) It extends to the whole of the ⁴[State of Andhra Pradesh].

(3) It shall come into force at once in the municipality of Guntur and in the area within a distance of five miles from the limits of that municipality, and it shall come into force in any other ⁵[specified area] in the State on such date as the State Government may, by notification in the ⁶[Andhra Pradesh Gazette] appoint.

2. Definition :—In this Act, unless there is anything repugnant in the subject or context—

(a) “area” means any area in which the provisions of this Act are in force for the time being,

⁷(aa) “building” means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes and includes—

(i) the garden, grounds, garages and out house if any, appurtenant to such house or hut or part of such house or hut,

(ii) any furniture supplied or any fittings installed by the landlord for use in such house or hut or part of house or hut, but does not include a room in a hotel or boarding house.

(b) “Competent authority” means the Officer authorised by the State Government by notification in the ⁸[Andhra Pradesh Gazette], or to perform the functions of the competent authority under this Act ;

⁹(bb) “landlord” includes any person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.

¹⁰[(c) “public purpose” means any purpose relating to the provisions of accommodation for the offices and Officers of the Government of Andhra Pradesh or for persons whose houses are requisitioned under this Act and includes any other purpose connected with Government.]

(d) “prescribed” means prescribed by rules made under this Act :

(e) “requisition” means requisition for a public purpose :

(f) “requisitioned building” means a building in respect of which an order of requisition has been made by the competent authority under section 3 or section 4 :

¹¹[(g) X X X X].

⁴ Substituted by A. P. Act XI of 1960.

⁵ Substituted by A. P. Act XI of 1960.

⁶ Substituted by A. P. Adaptation of Laws Orders 1957.

⁷ Substituted by A. P. Act XII of 1960.

⁸ Substituted by A. P. Adaptation of Laws Order, 1957.

⁹ Inserted by A. P. Act XII of 1960.

¹⁰ Substituted by A. P. Act XII of 1960.

¹¹ Omitted by A. P. Act XII of 1960.

3. Requisitioning of vacant buildings :—The competent authority may, for public purpose, by order in writing served on the landlord, requisition—

- (1) a building newly constructed which has not been occupied :
- (2) a building newly constructed which has not been occupied, subsequent to such reconstruction : or
- (3) a building which is, or becomes vacant by the landlord or the tenant ceasing to occupy it or otherwise,

Explanation I.—A building may be requisitioned under this section notwithstanding that it is subject to an agreement of lease.

Explanation II.—A building that is not in continuous use for a residential or non-residential purpose shall be deemed to be vacant or unoccupied notwithstanding that it is kept locked or is subject to casual, inconsequential or temporary use for storage of goods for the stay of persons.

Explanation III.—Nothing contained in this section or in section 4 it shall be deemed to authorise the requisitioning of any building used exclusively for purposes of religious worships.

4. Requisitioning of occupied buildings :—(1) Where landlord is in possession or is entitled to immediate possession of more buildings than one in the same area, and the competent authority is of the opinion that, having regard to the landlords calling, standard of living, nature and extent of business and other material facts, the landlord's residential or non-residential requirements, as the case may be, would be adequately served allotting to him one or more of the said buildings and that the other building or buildings are needed for public purpose, the competent authority may, by order in writing served on the landlord, allot to his residential or non-residential purpose, as the case may be, such one or more buildings and requisition the other building or buildings.

(2) Where a landlord is in occupation of a portion of a building and the competent authority is of the opinion that the said portion should be requisitioned in order that the said portion may, with the rest of the building, be used as single unit for a public purpose, the competent authority may, by order in writing served on the landlord, allot to him for his occupation another building whether belonging to the landlord or requisitioned from any other person and requisition the portion of the building of which the landlord is in occupation.

(3) Where one building belonging to a landlord is in his occupation and another building belonging to him is in occupation of another person as the landlord's tenant or licensee, and the competent authority is of the opinion that the building in the occupation of the landlord is needed for a public purpose, and the building in the occupation of the tenant or the licensee is suitable for the landlords' occupation, the competent authority may, subject to the provisions of sub-section (5), by order in writing served on the landlord and the tenant or the licensee, requisition the building in the occupation of the landlord and allot to the landlord for his occupation the building in the occupation of the tenant or the licensee.

(4) Where a building is in the occupation of a tenant or a licensee, the competent authority may, subject to the provisions of sub-section (5), by

order in writing served on the landlord and the tenant or the licensee, requisition the building.

(5) The tenant or the licensee in the occupation of a building against whom any order requisitioning a building has been issued under sub-section (3) or sub-section (4) shall be paid compensation equal to the amount of rent payable by him for the building for a period of four months plus reasonable expenses incurred on account of vacating the building and reoccupying another building or in lieu of such compensation and expenses, shall be given two months' notice to vacate the building :

Provided that it shall not be necessary to pay any such compensation and expenses or to give any such notice as aforesaid, if the competent authority allots to the tenant or licensee for his occupation another building either belonging to the landlord or the tenant or the licensees or requisitioned from some other person and which, in the opinion of the competent authority, is suitable.

(6) Occupation by a person to whom a requisitioned building is allotted by the competent authority shall be subject to such conditions as may be prescribed.

5. Procedure to be followed before issuing order of requisition :—

(1) Before issuing any order requisitioning a building under section 3 or section 4, the competent authority—

(a) shall call upon the landlord or any other person who may be in possession of the building by notice in writing to show cause, within 15 days from the date of service of such notice on him, why the building should not be requisitioned ; and

(b) may, by order, direct that neither the landlord nor any other person shall, without the permission of the competent authority, dispose off or structurally alter the building or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order.

(2) If, after considering the cause, if any, shown by the landlord or other person in possession of the building, the competent authority is satisfied that it is necessary or expedient so to do, he may, by order in writing, requisition the building and may make such further orders as appear to him to be necessary or expedient in connection with the requisitioning.

6. Manner of service of the order of requisition :—(1) An order of requisition shall be served on the landlord, the tenant or the licensee—

(a) by delivering or tendering a copy of the order to the landlord or the tenant or the licensee and, if such delivery or tender is not immediately practicable, by affixing a copy of the order on the outer door or other conspicuous part of the building requisitioned, and

(b) by sending by registered post a copy of the order of requisition addressed to the landlord or the tenant or the licensee at his usual place of residence.

(2) An order of requisition shall be deemed to be served on the landlord or the tenant or the licensee, as the case may be, on the date on which the copy sent by registered post will in the usual course of post, be received by the

addressee. Such date hereafter in the Act referred to as the date of service of the order.

7. Contents of the order of requisition :—Every order of requisition shall be in writing and shall specify—

- (a) the period of requisition which shall be ¹[five years] or any lesser period :
- (b) the officer to whom possession of the building should be delivered (hereafter in this Act referred to as the authorised officer) ; and
- (c) the date on which such possession should be delivered the said date not being earlier than three days from the date of service of the order.

²[7-A. Power to extend period of requisition, where it is less than five years :—Where the period of requisition specified in an order of requisition is less than five years, the competent authority may, from time to time, by order in writing served on the landlord in the manner laid down in section 6, extend the period of requisition, after giving the landlord a reasonable opportunity of making his representations but in no case shall the total period of requisition exceed five years.]

8. Rights over requisitioned building :—(1) With effect from the date of service of the order of requisition, the State Government shall be deemed to be the tenant of the landlord and, save as otherwise provided by this Act, their rights and liabilities shall be governed by the Transfer of Property Act, 1882 (Central Act 4 of 1882).

(2) With effect from the date specified under section 7, Clause (c), and for the period of requisition, the right to possession of the requisitioned building shall vest, on behalf of the State Government, in the competent authority as against the landlord, his tenant or licensee, if any, and every other person having an interest in the building.

(3) The person in occupation or control of the requisitioned building shall deliver possession of the said building to the authorised officer on or before the date mentioned in the order of requisition, in default, the competent authority or the authorised officer may take possession of the building breaking open locks, if any, and using such force with such police assistance as may be required for evicting any person who refuses to vacate and for removing any obstruction or resistance to the taking of such possession.

(4) The rent payable by the State Government to the landlord for a requisitioned building shall be paid by the competent authority or the licensee and shall be such rent as may be agreed between the landlord and the competent authority or the licensee, as the case may be, or in default of agreement, shall be the fair rent fixed under section 9 :

³[X X X X].

9. Fixation of fair rent :—(1) The landlord or the competent authority or the licensee may apply to the Court of the District Munsiff having Juris-

¹ Substituted by S. 2 of the A. P. Act XIX of 1955.

² Substituted by A. P. Act XIX of 1955.

³ Proviso omitted by S. 7 of A. P. Act XII of 1960.

diction over the area in which the requisitioned building is situated for fixing the fair rent of the building for period of requisition.

¹[*Explanation*.—A munsiff appointed under the ²[Andhra Pradesh (Telengana Area) Civil Courts Act, 1954 (Act XXXVI of 1954) in the territories specified in sub-section (1) of section 3 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), shall be deemed to be a district Munsiff for the purpose of this section].

(2) The fair rent shall be—

- (a) a monthly payment in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the building, if it had been taken on lease for that period ; and
- (b) such sum or sums, if any, as may be found necessary to compensate the landlord for all or any of the following matters, namely :—
 - (i) pecuniary loss due to requisitioning ;
 - (ii) expenses on account of vacating the requisitioned building.
 - (iii) expenses on account of reoccupying the building upon release from requisition ; and
 - (iv) damages (other than normal wear and tear) caused to the building during period of requisition, including the expenses that may have to be incurred for restoring the building to the condition in which it was at the time of requisition.

(3) Against an order passed by the District Munsiff Court fixing the fair rent, the landlord or the competent authority or the licensee may, within fifteen days from the date of such order, prefer an appeal to the Subordinate Judges' Court having Jurisdiction over the area in which the building is situated or if there is no such Court, to the District Court, and the decision of the subordinate Judge's Court or the District Court, as the case may be, on such appeal shall be final and shall not be liable to review or revision.

³[When this Act comes into force in any area in the cities of Hyderabad and Secunderabad, application for fixation of fair rent under sub-section (1) in respect of requisitioned buildings situated in such area shall lie to the Additional Judge of the City Civil Court, Hyderabad, and appeals under sub-section (3) from any order passed by such Additional Judge shall lie to the Chief Judge of that Court.]

10. Improvements :—The competent authority shall have power to make or authorize the making of additions or alterations to the requisitioned building without the consent of the landlord and without any liability to enhancement of rent by reason of such additions or alterations.

Provided that, on the expiry of the period of requisition or at the time of the surrender of the building to the landlord by mutual agreement, the landlord shall be entitled to take the building with the additions and alterations of a permanent nature but without any liability to pay compensation for such additions and alterations or to have such additions and alterations

¹ Added by A. P. Act XII of 1960.

² Substituted by A. P. Act IX of 1961.

³ Added by S. 8 of A. P. Act XII of 1960.

removed and to have the building restored, at the expense of the State Government, to its condition at the time of the requisition subject to changes caused by reasonable wear and tear.

11. Appeals from order of requisition :—(1) Any person aggrieved by an order of requisition made by the competent authority under section 3 or section 4 may, within fifteen days from the date of service of the order, prefer an appeal to the State Government.

(2) On receipt of an appeal under sub-section (1) the State Government may, after calling for a report from the competent authority and after making such further inquiry, if any, as may be necessary pass such orders as they think fit and the order of the State Government shall be final.

(3) Where an appeal is preferred under sub-section (1) the State Government may stay the enforcement of the order of the competent authority for such period and on such conditions as they think fit.

12. Power to obtain information :—(1) The competent authority may, by order, require any landlord, tenant or other person to furnish such information and in such manner and at such time as may be specified in the order relating to a building which is requisitioned or intended to be requisitioned under this Act.

(2) Whoever being required by an order of the competent authority under sub-section (1) to furnish any information wilfully omits to furnish such information in the manner and at the time required in the order, or furnishes, as true information on the subject which he knows, or has reason to believe to be false, shall be punished with fine which may extend to one thousand rupees.

13. Power to enter and inspect any building :—The competent authority or any officer empowered in this behalf by such authority, by general or special order, may enter and inspect any building for the purpose of determining whether, and if so, in what manner, an order under this Act should be made in relation to such building, or with a view to securing compliance with an order made under this Act.

14. Easement not to be disturbed :—The landlord of a building requisitioned under this Act or other person in possession thereof shall not, without the previous written consent of the competent authority or except for the purposes of effecting repairs or complying with a municipal requirement wilfully disturb any convenience or easement attached to such building or remove, destroy or render unserviceable any thing provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the building.

15. Bar of certain proceedings :—(1) No suit, prosecution or other legal proceeding shall lie against the State Government or the competent authority or the authorised officer or any other officer or servant of the State Government, or any other person acting under the supervision or direction of an officer of the State Government in respect of any order passed or act done or purporting or intended to be done in good faith under this Act.

(2) The opinion of the competent authority that a building is needed for a public purpose or that a building is vacant or unoccupied or that the residential or non-residential requirements of a person would be adequately

served by allotting to him any particular building or buildings shall be final and shall not be liable to be quashed in a Court of Law.

16. Power to make rules :—(1) The State Government may, by notification in the ¹(Andhra Pradesh Gazette) make rules for carrying out the purpose of this Act.

(2) All rules made under this section shall be laid for not less than fourteen days before ²[both the houses of State Legislature] as soon as possible after they are made, and shall be subject to such notifications, whether by way of repeal or amendment, as ³[the State Legislature], may make during the session in which they are so laid.

17. Act to override contracts and other laws :—(1) The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law or in any contract.

⁴[(2) When this Act comes into force in any area in the territories which immediately before 1st November, 1956, were comprised in the State of Andhra, or in the territories specified in sub-section (1) of section 3 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), the provisions of ⁵[the Madras Building (Lease and Rent Control) Act, 1949, (Madras Act XXV of 1949) in the former case and the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (Hyderabad Act XX of 1954) in the latter case, shall have effect subject to the provisions of the Act].

18. Saving in respect of buildings already requisitioned :—Notwithstanding anything contained in section 1(3) all buildings requisitioned by the Government under the Requisitioning of Buildings (Andhra Area) Ordinance 1953 (Madras Ordinance I of 1953), while that Ordinance was in operation in the Kurnool and Namdyal Municipalities, shall be deemed to have been requisitioned under this Act after it had been brought into force in the said Municipalities under section 1 (3) of this Act : but nothing contained herein shall be construed as authorising the making of any fresh requisitions in the said municipalities unless this Act is brought into force therein by a notification under section 1 (3).

⁶[**19. Power to remove difficulties :—**If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order notified in the Andhra Pradesh Gazette, make such provisions or give directions as appear to them to be necessary for the removal of the difficulty.

20. Repeal of Hyderabad Regulation II of 1357 Fasli :—The Hyderabad Requisitioning of Immoveable Property (Temporary Powers) Regulation, 1357, Fasli (Hyderabad Regulation II of 1357 Fasli), is hereby repealed.

21. Act not to apply to buildings newly constructed :—The provisions of this Act shall not apply to any building constructed after the commencement of ⁷[the Andhra Pradesh Requisitioning of Building (Extension and

¹ Substituted by A. P. Adaptation of Laws Orders, 1957.

² Substituted by A. P. Act XII of 1960.

³ Substituted by A. P. Act XII of 1960.

⁴ Substituted by A. P. Act XII of 1960.

⁵ See A. P. Act XV of 1960.

⁶ Added by A. P. Act XII of 1960.

⁷ Substituted by A. P. Act IX of 1961.

Amendment) Act 1960,] for a period of five years from the date of such construction.

Andhra Pradesh (4)

THE LAND ACQUISITION (MINES) (Andhra Pradesh Extension and Amendment) ACT NO. V OF 1965

(Received assent of President on 13-2-1965)

(Published in the Andhra Pradesh Gazette Ext. Pt.
IV-B, Page 1, dated 24-2-65.)

An Act to extend the Land Acquisition (Mines) Act 1885 (Central Act XVIII of 1885) to certain territories in the State of Andhra Pradesh and further to amend it in its application to the State.

Be it enacted by the Legislature of the State of Andhra Pradesh in the sixteenth year of Republic of India as follows :—

1. Short title and extent :—(1) This Act may be called the Land Acquisition (Mines) (Andhra Pradesh Extension and Amendment) Act, 1965.

(2) It extends to the whole of the State of Andhra Pradesh.

2. Definition :—In this Act “transferred territories” means the territories specified in sub-section (1) of section 3 of the State Reorganisation Act, 1956 (Central Act XXXVII of 1956).

3. Extension of Central Act XVIII of 1885 to Transferred Territories :

—The Land Acquisition (Mines) Act 1885, (Central Act XVIII of 1885) (hereinafter referred to as the principal Act), as in force at the commencement of this Act in the territories of the State of Andhra Pradesh other than the transferred territories and as amended by section 4, is hereby extended to and shall be in force in the transferred territories.

4. Amendment of section I (Central Act XVIII of 1885) :—In sub-section (2) of section 1 of the principal Act after the expression “except the territories which immediately before the 1st November 1956, were comprised in Part B State” the expression “other than the territories specified in sub-section (1) of section 3 of the State Reorganisation Act, 1956 (Central Act XXXVI of 1956)” shall be added.

PART III

CHAPTER II

Assam (1)

THE ASSAM LAND (Requisition and Acquisition) ACT XV OF 1964

(Received the assent of President on 29-7-64 and published in Assam Gazette, Extra. No. 41, dated 3-8-64).

An Act to amend and consolidate the Law for requisition and speedy acquisition of premises, and land for certain public purposes.

PREAMBLE.—Whereas it is expedient to amend and consolidate the law for requisition and speedy acquisition of premises and land for certain public purposes :

It is hereby enacted in the fifteenth year of Republic of India as follows.—

1. Short title, extent and commencement :—(1) This Act may be called the Assam Land (Requisition and Acquisition) Act, 1964.

(2) It extends to the State of Assam.

(3) It shall come into force at once.

2. Definitions :—In this Act, unless there is anything repugnant in the subject or context :

(a) “Collector”, “land” and “person interested” have the same meaning as in the Land Acquisition Act, 1894 (Act I of 1894).

Explanation.—Land for purposes of this Act includes trees, buildings and standing crops on it, and easement.

(b) “Court” means a principal Civil Court of Original Jurisdiction, and includes the Court of any Additional Judge, Subordinate Judge or Munsiff whom the State Government may appoint, by name or by virtue of his office, to perform, concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits, in the case of Munsiff, up to the limits of the pecuniary Jurisdiction with which he is vested under section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887).

(c) “displaced person” means—

(i) any person, who on account of the setting up of the two Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan, has been compelled to leave his place of residence in such area after the 1st day of March, 1947 and who has subsequently been residing in India and is in distress,

Or,

(ii) a person who has been displaced due to various acquisition proceedings relating to land in Assam since 1943.

(d) “Owner” means proprietor, a *patta* holder and his co-sharer ; and

(e) “prescribed” means prescribed by rules made under this Act.

3. Power to Requisition :—If in the opinion of the State Government or any person authorised in this behalf by the State Government, it is necessary so to do, for maintaining supplies and services essential to the life of the community or for providing proper facilities for accommodation, transport, communication, irrigation, flood control and anti-erosion including embankment and drainage or for providing land individually or the groups to landless, flood affected or displaced persons or to a Society Registered under the Assam Co-operative Societies Act, 1949 (Assam Act I of 1950) or a company incorporated under the Companies Act, 1956 (Act I of 1956), formed for the benefit and rehabilitation of landless, flood affected or displaced persons, the State Government or the person so authorised, as the case may be, by order in writing, requisition any land and may make such further orders as appear to it or to him to be necessary or expedient in connection with the requisitioning :

Provided that no land used for the purpose of religious worship shall be requisitioned under this section :

Provided further that when it is necessary to provide the land to landless or displaced persons such land shall not be requisitioned unless the person interested in the land has been given an opportunity of making representation against it within such time and in such manner as may be prescribed in this behalf.

(2) An order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of a tenant, also on such tenant.

(3) When the order for requisition is made by any authority other than State Government, any person interested in the land within 30 days from the date of service of the order, may appeal to the State Government and the decision of the State Government in such appeal shall be final.

4. Powers to take possession of requisitioned land :—(1) Where any land has been requisitioned under section 3 the State Government or the person authorised in this behalf by the State Government may, by order in writing, direct the owner, the tenant, or any other person who may be in possession of the land whether at the time of requisition or at any time thereafter before the land is released from requisition under section 3 to surrender or deliver possession thereof to the Collector or any other person duly authorised by him in this behalf within such days of service of the order as may be specified therein.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the State Government or the person authorised in this behalf, in addition to any other provisions in this Act, may take possession of the land and may, for that purpose use such force as may be necessary.

(3) An order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of a tenant or any other person, also on such tenant or occupant.

(4) If after service of the notice on the owner, tenant or the occupant any person other than the person on whom the notice is served enters into possession of the land, nothing in this sub-section shall be construed as requiring fresh notice on such person and such person shall deliver possession

to the Collector or any other person duly authorised by him in this behalf, on the date previously notified, notwithstanding that no fresh notice has been served on him.

(5) If it is found that the person entering into unauthorised possession of the land under sub-section (4) has raised any crop or erected any building or other construction on the land, the Collector or any other person duly authorised by him in this behalf shall have the power to confiscate or destroy the crop so raised or the building or other construction so erected by such person and such person shall not be entitled to any compensation for any loss or damage so done.

5. Repairs of building :—Where any land with building standing thereon is requisitioned under section 3, the State Government or the person authorised in this behalf by the State Government may order the owner to execute such repairs as may be necessary and are usually made by landlords of the locality and as may be specified in the notice issued in this behalf within such reasonable time as may be mentioned therein and if the owner fails to execute any repairs in pursuance of such order, the State Government or any person authorised in this behalf by the State Government may cause repairs specified in the order to be executed at the expense of the owner and the cost thereof, may, without prejudice to any other mode of recovery, be deducted from the compensation payable to the owner in such proportion and over such period as may be prescribed :

Provided that where an order is made by an authority other than the State Government, to carry out repairs at the expense of the owner, the owner or any other person interested in the land within 30 days from the date of service of the order, may appeal to the State Government and the decision of the State Government on such appeal shall be final.

6. Acquisition of land :—(1) Where any land has been requisitioned under section 3, the State Government may use or deal with it in such manner as may appear to it to be expedient and may acquire such land by publishing in the *Official Gazette* a notice to the effect that the State Government has decided to acquire such land in pursuance of this section.

(2) Where a notice as aforesaid is published in the official Gazette, the requisitioned land and premises shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end.

(3) Subject to the provision of this Act on such vesting, the provisions of the Land Acquisition Act, 1894 (Act I of 1894) with the rules framed thereunder shall, so far as may be, apply to such land.

7. Notice to person interested :—(1) After the publication of a notice under sub-section (1) of section 6, the Collector shall cause public notice to be given at convenient places or near the land to be taken stating that the State Government has acquired the land and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so acquired and shall require all persons interested in the land to appear personally or by duly authorised agent before the Collector at a time and place therein mentioned

(such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interest. The Collector, may in any case require such statement to be made in writing and signed by the party or his agent.

8. Release from requisition :—(1) Where any land requisitioned under section 3 is not required and is to be released from requisition it will revert to the owner and the Collector will deliver possession of the land to such owner or person interested who was recognised under sub-section (4) of section 11 in as good a condition as the land was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force.

(2) The delivery of possession of such land to the person specified in the order made under sub-section (1) shall be a full discharge of any liability of the State Government to deliver possession to such person as may have rightful claim to possession thereof but shall not prejudice any right in respect of such land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person to whom the possession of any land requisitioned under section 3 is to be delivered can not be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the State Government shall publish in the Official Gazette a notice declaring that such land is released from requisition and shall cause a copy thereof to be affixed on some conspicuous part of such land.

(4) When a notice referred to in sub-section (3) is published in the Official Gazette the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof : and or other claims in respect of such land for any period after the said date.

9. Speedy acquisition of land in certain cases :—(1) Notwithstanding anything contained hereinbefore, if in the opinion of the State Government or the Collector it is necessary or expedient to acquire speedily any land for works or other development measures in connection with flood control and anti-erosion measures including embankment and drainage, the Government or the Collector by order in writing acquire the land stating the area and boundaries thereof.

(2) The Collector shall cause the order passed under sub-section (1) to be served in such a manner as may be prescribed on the owner of the land and also on the tenant or the occupant in cases where the owner is not in occupation of the land and also a notice to the same effect stating that claims to compensation for all interests in the land may be made to him within such time as may be prescribed :

Provided that when the person to be so served is not readily traceable or the ownership of the land is in dispute, the Collector shall cause the above order and notice to be published in such a manner as may be prescribed.

10. Vesting and taking possession of land acquired under section 9 :—

(1) When an order of acquisition is served or published under sub-section

(2) of section 9, the land shall vest absolutely in the State Government free from all encumbrances on the date the order is so served or published.

(2) The Collector may, at any time after the land becomes so vested, proceed to take possession thereof.

(3) On such vesting, the order passed under sub-section (1) of section 9 shall be published in the Official Gazette in the manner prescribed.

11. Compensation :—(1) Subject to the provisions of sub-section (2), whenever any land is acquired under section 6 or section 9, there shall be paid compensation, the amount of which shall be determined by the Collector. In determining the amount of compensation, the Collector shall take into consideration the market-value of the land for a period of five years preceding the date of publication of the notice under sub-section (1) of section 6 where the land is acquired under the said section, and where the land is acquired under section 9 from the date of passing of the order under sub-section (1) of the said section, and the amount of compensation payable shall be on the basis of the average market-value so arrived at.

Provided that where any building is acquired under section 6, the compensation shall be payable at the market-value of the building on the date of publication of the notice under sub-section (1) thereof.

(2) In the case of land with respect to which any settlement has been made for special cultivation or which is included in any grant, if such land is lying fallow or uncultivated or is not utilised for the purpose for which the grant or settlement was made or for the purposes incidental thereto, when the compensation payable for acquisition of such land together with trees, if any, standing on it shall be an amount equal to ten times the annual land revenue which on the date of publication of the notice referred to in sub-section (1) of section 6 or sub-section (1) of section 9, is or would have been payable if such land is or had been assessable to revenue at full rates :

Provided that where any amount was originally paid to Government by the grantee as price or premium for the land, an additional amount equal to the amount originally paid by the grantee shall also be payable.

Explanation.—"Special cultivation" means cultivation which involves, either owing to the nature of the crop or owing to the process of cultivation, a much larger expenditure of capital per acre than is incurred by most of the cultivators in the State, and includes cultivation of tea

(3) When the compensation has been determined under sub-section (1) or sub-section (2), the Collector shall make an award in accordance with the principles set out in section 11 of the Land Acquisition Act, 1894 (Act I of 1894) but no amount referred to in sub-section (2) of section 23 of that Act shall be included in the award.

(4) Where any land is requisitioned under section 3, there shall be paid subject to the provisions of sub-section (5) below, to every person interested such compensation as may be agreed upon in writing between such person and the Collector or in the absence of agreement, reasonable compensation in respect of—

(a) the requisition of such land : and

(b) the damage done during the period of requisition of such land

other than what may have been sustained by reasonable wear and tear and irresistible force :

Provided that in determining the amount of compensation, whether in the case of agreement or otherwise, such amount shall not exceed the rent payable under the provisions of the Assam Urban Areas Rent Control Act, (Assam Act II of 1962) of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 (Assam Act XII of 1955) or the Assam (Temporarily Settled Districts) Tenancy Act, 1935 (Assam Act III of 1935) or far as they may be applicable or of any of the statutory re-enactment or modification thereof.

(5) Notwithstanding the provisions of sub-section (2) of section 12, in the case of land included in any grant or settlement made for special cultivation or other purpose which is lying fallow or uncultivated and which is requisitioned for the purpose of cultivation, the annual compensation payable under clause (a) of sub-section (4) shall in no case be more than double the annual land revenue which, on the date of order of requisition, is or would have been payable if such land is or had been assessable to revenue at full rates.

12. Reference to Court :—(1) The Collector shall in every case—

(a) when any person aggrieved by an award made under sub-section (3) of section 11 makes an application requiring the matter to be referred to the Court : or

(b) when there is any disagreement with regard to the compensation payable under sub-section (4) of section 11 on the application of the person entitled to compensation requiring the matter to be referred to Court, refer the matter to the decision of the Court.

(2) Subject to the provisions of this Act, the provisions of the Land Acquisition Act 1894 (Act 1 of 1894), shall *mutatis mutandis* apply in respect of any reference made to the Court under sub-section (1).

13. Payment of interest :—When the amount of any compensation payable under this Act is not paid or deposited within thirty days from the date of the award of the Collector, the collector shall pay the amount awarded with interest thereon at the rate of 6 per cent per annum from the date of the award until it shall have been to paid or deposited.

14. Refund of land revenue :—After the publication of the notice referred to in sub-section (1) of section 6 or after taking possession of the land under sub-section (2) of section 10, as the case may be, no land revenue shall be payable for any period thereafter and land revenue if any paid in respect of such period shall be refunded.

15. Power to enter upon land etc. :—The State Government may with a view to requisitioning any land or for the purpose of determination by the Collector of the amount of compensation payable under this Act by order,—

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be specified :

(b) direct that the owner or occupier of the land shall not dispose of it or alter it without permission from the Government till the expiry of such period as may be specified in the order :

(c) authorise any person to perform in respect of any land all or any of the functions referred to in sub-section (2) of section 4 of the Land Acquisition Act, 1894 (1 of 1894).

16. Penalty :—If any person contravenes any order made under this Act he shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

17. Saving :—Save as otherwise expressly provided in this Act no decision or order made in exercise of any power conferred by or under this Act shall be called in question in any court.

18. Protection of action taken under this Act :—(1) No such prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or any order made thereunder.

(2) Save as otherwise expressly provided in this Act, no suit or other legal proceeding shall lie against the State Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rule or any order made thereunder.

19. Recovery of money payable to Government :—Any money payable to State Government under this Act shall be recoverable as arrear of land revenue.

20. Power to make Rules :—(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :—

(a) the manner of service of orders on the owner or occupier of land referred to in sub-section (2) of section 3.

(b) the manner of service of notice and orders on the persons referred to in sub-section (2) of section 7 and in sub-section (1) of section 9 respectively.

(c) the manner and the conditions and terms on which land will be settled or disposed of by Government : and

(d) the manner of disposal of any structure or tree standing on the land.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the Assam Legislative Assembly while it is in session for a total period of fourteen days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the sessions immediately following, the Assam Legislative Assembly agree in making any modifications in the rule made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be : so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

21. Repeal and Saving :—(1) The Assam Land (Requisition and Acquisition) Act 1948 (Assam Act XXV of 1948), the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act 1955 (Assam Act VI of 1955) and the Assam Acquisition of Land for Flood Control and Prevention of

Erosion (Validation) Act, 1959 (Assam Act XXI of 1960) are hereby repealed.

(2) Notwithstanding such repeal—

- (a) any rule made, any order issued, any notification published, any proceeding commenced, any action taken or anything whatsoever done under the Act repealed, shall continue and be deemed to have continued and have effect as if made, issued, published, commenced, taken or done under the corresponding provisions of this Act :
- (b) any action taken, order made or other acts and things done by any officer acting or purporting to act under the Acts repealed in connection with the requisition or acquisition of any land shall be valid and shall be deemed always to have been valid, and shall not be called in question in any court on the ground of incompetency of the officer to act under the Acts repealed.

22. Validation of acquisition and compensation under the repealed Acts :
—Notwithstanding anything contained in any judgement, decree or order of any Court, all lands requisitioned, acquired, compensation paid for works undertaken or purported to have been requisitioned, acquired, compensation paid or works undertaken under the Act repealed shall be and shall be deemed always to have been as validly requisitioned, acquired, paid or undertaken as if the provisions of this Act were in force at all material times when such requisition or acquisition was made or compensation was paid or works were undertaken, and accordingly—

- (a) no suit or other proceeding shall be maintained or continued in any court against the State Government or any officer for the release of any land so requisitioned or acquired or for payment of any damages, and
- (b) no Court shall enforce a decree or order directing the release of any land so requisitioned or acquired or for the payment of any damages.

Assam (2)

THE ASSAM LAND (REQUISITION AND ACQUISITION) (AMENDMENT) ACT NO. 24 OF 1963

Repealed

Notes

The entire Act No. 24 of 1963 is repealed by section 21 of the Assam Land (Requisition and Acquisition) Act XV of 1964 which came into force in August 3, 1964. Vide the preceding Chapter of this Part.

The Assam Land (Requisitioning and Acquisition) Act XXV of 1948 was held *intra vires* the State Legislature on the grounds of competence of the Legislature to pass it at the time prior to the Constitution and that it was not

affected by the Tea Act of 1953 passed by Central Legislature¹, the Land Acquisition Act 1 of 1894 is applicable².

PART III

CHAPTER III

Bihar (1)

THE LAND ACQUISITION (BIHAR AMENDMENT) ACT, 1960

BIHAR ACT, XI OF 1961

The following Act of Bihar Legislature having been assented to by the President on 22nd April 1961, was published in the Bihar Gazette Extra-Ordinary, No. 242 dated June 1, 1961.

An Act to amend the Land Acquisition Act 1894, in its application to the State of Bihar.

BE it enacted by the Legislature of the State of Bihar in the Eleventh year of the Republic of India as follows—

1. Short title and application—(1) This Act may be called the Land Acquisition (Bihar Amendment) Act, 1960.

(2) It shall apply to acquisitions of land made by the State Government except for the purposes of the Union.

2. Repeal, revival and saving—(1) The Land Acquisition (Bihar Amendment) Act, 1951 (Bihar Act XVII of 1951), the Land Acquisition (Bihar Amendment) Act, 1956 (Bihar Act XXI of 1956) and the Land Acquisition (Bihar Second Amendment) Act, 1956 (Bihar Act XXXIV of 1956), and all amendments whether by omission, insertion or substitution of any matter made by them in the Land Acquisition Act, 1894 (1 of 1894) are hereby repealed.

(2) All provisions of the Land Acquisition Act, 1894 (1 of 1894) which were omitted or substituted by the Acts repealed under sub-section (1) shall be deemed to have revived.

(3) The repeal of the Acts under sub-section (1) shall not affect their previous operations, and subject thereto, anything purported to have been done or any action purported to have been taken in the exercise of any powers conferred by or under any of the aforesaid Act, shall be deemed to have been done or taken in the exercise of the powers conferred by or under the corresponding provisions of this Act as if this Act was in force on the day on which such thing was done or action taken.

3. Amendment of section 3 of Act I 1894—In section 3 of the Land

¹ *Paresh Chandra Chatterjee v. State of Assam*, A. I. R. 1962, S. C. 167.

² *All India Tea and Trading Co. Ltd. v. S. D. O. Mangalgudi*, A. I. R. 1962, Assam 20.

Acquisition Act 1894 (1 of 1894) so as amended (hereinafter referred to as the said Act)—

- (i) For clause (c), the following clauses shall be substituted, namely.—
 - “(c) The expression ‘Collector’ means the Collector of a district and includes a Deputy Commissioner, Additional Collector, Additional Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act except the functions under sections 4, 5A, 6, 35 and 38” and
- (ii) For clause (f) the following clause shall be substituted, namely :—
 - “(f) the expression ‘public purpose’ includes provision for or in connection with—
 - (i) sanitary improvements of any kind including reclamation,
 - (ii) the laying out of village sites or townships, or the extension, planned development or improvement of existing village sites or townships ; and.”

4. Amendment of section 4 of Act I of 1894—In section 4 of the said Act—

- (a) For sub-section (1) the following sub-section shall be substituted, namely :—
 - “(1) whenever it appears to the appropriate Government or the Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published at the office of the Collector, at the office of the Sub-divisional Officer, at the offices of the smallest revenue administrative unit and Gram Panchayat, if any, constituted under the Panchayat Raj Act, 1947 (Bihar Act VII of 1948) and at some conspicuous place in the village in which the land is situated : and the Collector shall cause copies of the notification served on all persons known or believed to be interested in the land.

Explanation.—For the purposes of this section the expression “smallest revenue administrative unit” shall mean the revenue administrative unit next below that of a subdivision whether known for the time being, as N, E, S, Block, Circle Anchal or otherwise” ; and

(b) in sub-section (2) after the words “such Government”, the words ‘or the Collector’ shall be inserted.

5. Amendment of Section 5A of Act I of 1894.—In Section 5A of the said Act,

- (i) in sub-section (1), for the words “within thirty days after the issue of notice” the following words shall be substituted, namely :—

“Within thirty days after the publication of the notification referred to in the said sub-section at some conspicuous place in the village in which the land is situated or of the service of the copy thereof on him whichever is later ; and

(ii) For sub-section (2), the following sub-section shall be substituted, namely ;—

“(2) (i) Every objection under sub-section (1) shall be made in writing to the Collector who shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and making such further enquiry, if any, as he thinks necessary, decide the objection :

Provided that the appropriate Government may, either of its own motion or on the application of any person interested in the land, call for the record of the proceedings held by the Collector and pass such order as it may think fit.

(ii) The order of the appropriate Government and subject to such order, the decision of the Collector, under clause (i) shall be final”

6. Amendment of section 6 of Act I of 1894.—In section 6 of the said Act,—

(i) For sub-section (1), the following sub-section shall be substituted, namely ;—

“(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the Collector's report, if any, under the proviso to sub-section (2) of Section 5A, or the Collector is satisfied after hearing the objections, if any, under Section 5A, that any particular land is needed for a public purpose, or for a company, a declaration shall be made by the appropriate Government or the Collector, as the case may be, to that effect in writing ;

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of the Consolidated Fund of the State or some fund controlled or managed by a local authority, and

(ii) in sub-section (3), after the words “appropriate Government” the words “or the Collector, as the case may be” shall be inserted.

7. Amendment of section 7 of the Act I of 1894.—In section 7 of the said Act for the words “so declared” the words “so declared by the appropriate Government” shall be substituted.

8. Insertion of new Section 12A in Act 1 of 1894—After Section 12 of the said Act, the following section shall be inserted, namely ;—

“12A. *Correction of award*—(1) the Collector may, before a reference, if any, is made under Section 18,—

(i) on his own motion, within six months from the date of the award, or

(ii) on the application of the person interested made within six months from the date of the award, correct any clerical or arithmetical error in the award.

(2) The Collector shall give immediate notice of any correction made in the award to all persons interested.

(3) Where as a result of a correction made under sub-section (1), it appears to the Collector that any amount has been paid in excess to any person, such person shall, after having been given an opportunity of being heard be liable to refund the excess and if, on an order

made by the Collector in this behalf, he fails or refuses to pay it, the same shall be realised as a public demand."

9. **Substitution of new section for section 17 of Act I of 1894 :—**For section 17 of the said Act, the following section shall be substituted, namely :—

"17. *Special powers in cases of urgency*—(1) In cases of urgency whenever the appropriate Government so directs, the Collector, though no such award has been made, may on the expiration of fifteen days from the publication of the declaration mentioned in Section 6, or with consent in writing of the person interested at any time after the publication of the notification under Section 4 in the village in which the land is situated, take possession of any waste or arable land needed for public purpose or for a company, such land shall thereupon vest absolutely in the Government free from all encumbrances.

*Explanation :—*This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees.

(2) Whenever it becomes necessary for the purpose of protecting life or property from flood, erosion or other natural calamities or for the maintenance of communication other than a railway communication or it becomes necessary for any Railway Administration (other than the Railway Administration of the Union), owing to any sudden change in the channel of any navigable river or other unforeseen emergency for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or providing convenient connection with or access to any such station, to acquire the immediate possession of any land, the Collector may, immediately after the publication of the declaration mentioned in Section 6 or, with the consent in writing of the person interested, given in the presence of headman of the village or Mukhiya or Sarpanch as defined in the Bihar Panchayet Raj Act 1947 (Bihar Act VII of 1948), at any time after the publication of the notifications under Section 4 in the village in which the land is situated and with the previous sanction of the appropriate Government, enter upon and take possession of such land which shall thereupon vest absolutely in the Government free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty eight hours' notice of his intention to do so or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops on such land and for any other damage sustained by them caused by sudden dispossession and not accepted in Section 24 : and in case such offer is not accepted, the value of such crops and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the provisions of Section 5A shall not apply when the appropriate Government so directs or where possessions of the land has been taken with the consent of the person interested."

10. Amendment of Section 23 of Act I of 1894.—At the end of clause *first* of sub-section (1) of Section 23 of the said Act, the words, brackets and figures "or the market value of the land at the date of the publication of the declaration under Section 6, if there has been no notification under Section 4, sub-section (1)" shall be added.

11. Amendment of Section 35 of Act I of 1894—In sub-section (1) of Section 35 of the said Act—

(a) (i) after the words "whenever it appears to the appropriate Government" the words "or the Collector" shall be inserted.

(ii) after the words "the appropriate Government may direct the Collector to", the words "or the Collector may" shall be inserted ; and

(iii) after the words "for such term as it" the words "or he" shall be inserted.

(b) The following Explanation shall be added at the end, namely—

"*Explanation*—This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees."

12. Amendment of Section 38 of Act, I of 1894—In sub-section (1) of Section 38 of the said Act, after the word "Government" the word "or the Collector, as the case may be" shall be inserted.*

Bihar (2)

THE BIHAR AND ORISSA MUNICIPAL ACT VII OF 1922

(B & O Council)

(Extract)

Acquisition of land

Section 68. When any land is required for the purposes of this Act, or for the recoupment of the cost of carrying out any such purposes, the

*For cases under sections 2, 4, 6 & 17 of this Act and similar sections of other State Acts see *Dr. Ram Bihari Misra v. State of U.P.* A.I.R. 1964 M.P. 111.

For cases under sections 3, 17, 40 etc., *Charan Singh v. Govt. of U.P.* A.I.R. 1964 All. 42.

For cases under sections 18, 23, 53 & 54, *State of Bihar v. Anant Singh* A.I.R. 1964 Pat. 83 ; *Dy. Commissioner v. Bridhi Chand*, A.I.R. 1964 Pat. 159 ; *State of Bihar v. Jehal Mahto* A.I.R. 1964 Pat. 207 ; *Dodla Maliah v. State of Andh. Pra* A.I.R. 1964 A.P. 216 ; *Swarnamoyee v. E. A. Officer* A.I.R. 1964 Or. 113 ; *Raja Mohammad v. U.P. Govt.* A.I.R. 1964 All. 201.

local Government may, at the request of the Commissioners at a meeting, proceed to acquire it under the provisions of the Land Acquisition Act, 1894 : and on payment by the Commissioners of the compensation awarded, under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the Commissioners.

Bihar (3)

THE BIHAR PREMISES REQUISITION (TEMPORARY PROVISIONS) ACT XV OF 1950 (Extract)

Power to requisition

Sec. 3. (1) Whenever it appears to the provincial Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing requisition such premises.

* * * *

Procedure for fixing compensation

11. Where any premises are requisitioned under this Act, there shall be paid to all persons interested, compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out namely :—

- (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.
- (b) where no such agreement can be reached the Provincial Government shall appoint a District Judge or an Additional District Judge as arbitrator :
- (c) the Provincial Government may, in any particular case, nominate a person having expert knowledge as to the nature of the premises requisitioned, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose :
- (d) At the commencement of the proceedings before the arbitrator, the Provincial Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation.
- (e) The arbitrator in making his award shall have regard to the provisions of sub-section (1) of Section 23 of the Land Acquisition Act 1894 (1 of 1894), so far as they can be made applicable :
- (f) an appeal shall lie to the High Court against an award of an arbitrator ;
- (g) save as provided in this section and in any rules made under this Act, nothing in any law for the time being in force shall apply to arbitrators under this section.

(2) Compensation shall also be paid in respect of any damage to the premises during the period of requisition other than what may have been sustained by normal wear and tear or by natural causes. When the amount of such compensation can be fixed by agreement, it shall be paid in accordance with such agreement ; when no such agreement can be reached, the matter shall be referred to the arbitrator appointed under clause (b) of sub-section (1) and where no such arbitrator has been appointed, the Provincial Government shall appoint a District Judge or Additional District Judge as arbitrator. The provisions of clause (c), (d) (f) (g) of sub-section (1) shall also apply to such cases.

12. *Matters to be considered in fixing compensation by agreement* :—In determining the amount of compensation which may be fixed by agreement under clause (a) of sub-section (1) of Section 11, the Collector shall take into consideration :

- (a) the rent payable in respect of the premises ;
- (b) If, in consequence of the requisition of the premises, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ; and
- (c) the damage or loss of income (if any) sustained by the person interested between the date of service of the order under sub-section (1) or under clause (b) of sub-section (3) of Section 3 as the case may be, on such person and the date when the Collector takes possession of the premises.

13. *Persons with whom agreement is to be entered into.*—The Collector shall enquire into the respective rights of all persons interested in the premises and shall decide whether the compensation shall be paid to any such person periodically or in lump. If the compensation is to be paid periodically, the Collector shall, having regard to the terms and conditions under which a tenant may be in occupation of the premises, also decide whether the agreement for payment of compensation referred to in Section 11 shall be entered with such tenant or with the immediate landlord of such tenant.

14. *Deposit of compensation in case of dispute.*—When a dispute arises as to the person or persons to whom the amount or any part thereof is payable or as to the apportionment of the same or any part thereof the Collector shall keep the amount in revenue deposit till there has been a settlement of the dispute.

BIHAR (4)

The Bihar Abolition of Zamindari Act

XVIII of 1949 (Bihar)

An Act to provide for the transference to the Crown of the interests of proprietors and tenure-holders in land and of the mortgagees and

lessees of such interests including interests in trees, forests, fisheries *Jalkars*, Ferries, *Hats*, *Bazars*, Mines and minerals,

WHEREAS it is expedient to provide for the transference to the Crown of the interests of proprietors and tenure-holders in land and of the mortgagees and lessees of such interests, including interests in trees, forests, fisheries, *jalkars*, ferries, *hats*, *bazars*, mines and minerals :

It is hereby enacted as follows :

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3. **Notification vesting an estate or tenure in the Crown.**—(1) The Provincial Government may, from time to time, by notification, declare that the estates or tenures of a proprietor or tenure-holders, specified in the notification, have passed to and become vested in the Crown :

Provided that where the Provincial Government proposes to issue such notification in respect of the estates or tenures of a proprietor or tenure-holder, whose gross annual income in the opinion of the Collector exceeds a particular amount, the Provincial Government shall issue simultaneously such notification in respect of the estates or tenures of all other Proprietors or tenure-holders falling within that income group.

4. **Consequences of the vesting of an estate or tenure in the Crown.**—Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification under sub-section (1) of Section 3, the following consequences shall ensue, namely :—

(a) Subject to the subsequent provisions of this Chapter, such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or *cutchery* for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, *jalkars*, *hats*, *bazars* and ferries and all other *sairati* interests as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of *rai-yats* or under-*rai-yats*) shall, with effect from the date of vesting, vest absolutely in the Crown free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act.

ASSESSMENT OF COMPENSATION

19. **Appointment of Compensation Officer**—As soon as possible after the publication of the notification under sub-section (1) of Section 3, the Provincial Government shall appoint one or more officers to be designated as Compensation Officers who shall prepare in the prescribed form and in the prescribed manner a Compensation Assessment-roll containing the gross asset and the net income of each proprietor and tenure-holder

of estates and tenures, the arrears of rents, including royalties, cesses and interest referred to in clause (b) of Section 4 and the compensation to be paid in accordance with the provisions of this Act to such proprietor or tenure-holder and all other persons whose interests are transferred to the Crown under this Act together with such other particulars as may be prescribed.

24. **Rates of compensation**—After the net income has been computed under Section 23, the Compensation Officer shall for the purpose of preparing the Compensation Assessment-roll proceed to determine the amount of compensation to be payable in respect of the transference to the Crown of interests of each proprietor or tenure-holder as follows :—

(1) in the case of a proprietor or tenure-holder of a permanent or resumable tenure the compensation payable shall be determined in accordance with the following table, namely :—

AMOUNT OF NET INCOME.	RATE OF COMPENSATION.
(a) Where the net income so computed does not exceed Rs. 500.	Twenty times such net income.
(b) Where the net income so computed exceeds Rs. 500 but does not exceed Rs. 1,250.	Nineteen times such net income but in any case not less than the maximum amount under item (a) above,
(c) Where the net income so computed exceeds Rs. 1,250 but does not exceed Rs. 2,000.	Eighteen times such net income but in any case not less than the maximum amount under item (b) above,
(d) Where the net income so computed exceeds Rs. 2,000 but does not exceed Rs. 2,750.	Seventeen times such net income but in any case not less than the maximum amount under item (c) above.
(e) Where the net income so computed exceeds Rs. 2,750 but does not exceed Rs. 3,500.	Sixteen times such net income but in any case not less than the maximum amount under item (d) above,
(f) Where the net income so computed exceeds Rs. 3,500 but does not exceed Rs. 4,250.	Fifteen times such net income but in any case not less than the maximum amount under item (e) above.
(g) Where the net income so computed exceeds Rs. 4,250 but does not exceed Rs. 5,000.	Fourteen times such net income but in any case not less than the maximum amount under item (f) above.
(h) Where the net income so computed exceeds Rs. 5,000 but does not exceed Rs. 10,000.	Ten times such net income but in any case not less than the maximum amount under item (g) above.

AMOUNT OF NET INCOME.

RATE OF COMPENSATION.

- | | |
|---|--|
| (i) Where the net income so computed exceeds Rs. 10,000 but does not exceed Rs. 20,000. | Eight times such net income but in any case not less than the maximum amount under item (h) above. |
| (j) Where the net income so computed exceeds Rs. 20,000 but does not exceed Rs. 50,000. | Six times such net income but in any case not less than the maximum amount under item (i) above. |
| (k) Where the net income so computed exceeds Rs. 50,000 but does not exceed Rs. 1,00,000. | Four times such net income but in any case not less than maximum amount under item (j) above. |
| (l) Where the net income so computed exceeds Rs. 1,00,000. | Three times such net income but in any case not less than the maximum amount under item (k) above. |

To the amount thus determined shall be added—

- (i) fifty *per centum* of the arrears of rents including royalties, cesses and interest referred to in clause (b) of Section 4 and where there is a temporary lessee under any proprietor or tenure-holder of a permanent or resumable tenure fifty *per centum* of the arrears of rent due to such lessee from his tenants ; and
- (ii) the amount of compensation payable to a proprietor or tenure-holder in respect of mines and minerals as determined under section 25 ;

Explanation—The expression “resumable tenure” in this clause means tenure which is held subject to the condition that it shall lapse to the estate of the grantor and be resumable by him or his successor in title—

- (a) on failure of male heirs of the body of the original grantee in the male line : or
- (b) on the happening of any definite contingency other than that referred to above.

(2) in the case of the holder of temporary lease of an estate or tenure the compensation shall be paid out of the compensation payable under this Chapter to the immediately superior landlord of such lessee and the Compensation Officer shall apportion the compensation between such lessee and his immediately superior landlord subject to the rules made under this Act and, in making the apportionment, the Compensation Officer shall take into consideration the unexpired period of the lease, the advances paid by such lessee and the arrears of rent, if any, due to such lessee from his tenants ;

(3) in the case where in the opinion of Compensation Officer the net income or any portion of the net income in respect of any estate or tenure held under trust or other legal obligation has been dedicated exclusively to charitable or religious purposes without any reservation of pecuniary

benefit to any individual, the compensation payable in respect of such income or such portion thereof shall, instead of being assessed under clause (1), be as a perpetual annuity equal to such net income or such portion thereof, as the case may be ;

Explanation—The salary, remuneration or any allowance payable to a *Mutwalli* in the case of a *wakf* or to trustee in any other case including a *shebait* of a Hindu religious trust not exceeding 15 *per centum* of the income dedicated exclusively to charitable or religious purposes shall not be deemed to be a reservation of pecuniary benefit to any individual within the meaning of this clause.

(4) in the case where an estate or tenure or any part thereof is held in trust other than a trust exclusively dedicated for religious or charitable purposes and the beneficiaries thereof are members of a joint Hindu family, the compensation payable to each beneficiary shall be determined on the basis of his share of the net income in respect of such estate or tenure or part thereof, as the case may be ;

(5) in the case where the interest of a proprietor or tenure-holder is subject to a mortgage or charge ; the compensation shall first be payable to the creditor holding such mortgage or charge and the balance, if any, shall be payable to the proprietor or tenure-holder concerned. The amount of compensation payable to a creditor on account of such mortgage or charge shall be the amount determined under Chapter IV which, notwithstanding anything contained in any law for the time being in force, shall not in any case exceed the amount of compensation payable in respect of the estate or tenure or portion thereof which is subject to such mortgage or charge, and where there are two or more such creditors the compensation shall be payable to them in the order determined under the said Chapter ;

(6) in the case of an estate, succession to which is governed by the law of primogeniture, where any person is in receipt of a monetary allowance in lieu of maintenance which is a charge on the estate, the allowance paid to such person shall be deemed to be the net income of such person and he shall be paid compensation on such net income and the amount of such net income shall be deducted from the net income of the proprietor of such estate for the purpose of determining the amount of compensation payable to him under this Act :

Provided that if the claim of any person to such monetary allowance in lieu of maintenance or as to the extent of the charge on such estate on account of such maintenance is disputed by any person at any time before the final publication of the Compensation Assessment-roll under Section 28, the Compensation Officer shall, on application, make such inquiry into the matter as he deems fit and pass such order as may appear to him to be just and proper.

Provided further that an appeal against any such order of the Compensation Officer shall lie to the authority and be disposed of in the manner provided in Section 27.

For Computation of Compensation payable for Mines and Minerals vide S. 25 of the Act.

PAYMENT OF COMPENSATION.

32. **Manner of payment of compensation** :—(1) When the time within which appeals under Section 27 may be made in respect of any entry in or omission from a Compensation Assessment-roll, has expired or where any such appeal has been made under that section the same has been disposed of, the Compensation Officer shall proceed to make payment, in the manner provided in this section, to the proprietors, tenure-holders and other persons who are shown in such Compensation Assessment-roll as finally published under Section 28 to be entitled to compensation, of the compensation payable to them in terms of the said roll after deducting from the amount of any compensation, so payable any amount which has been ordered by the Collector under clause (b) or (c) of Section 4 to be so deducted.

(2) The amount of compensation so payable in terms of a Compensation Assessment roll as finally published shall be paid to the person or persons entitled thereto according to the said roll.

(3) The Compensation Officer shall in the prescribed manner tender payment of the compensation so payable to the person or persons entitled thereto according to the Compensation Assessment-roll as finally published and shall pay it to such person or persons unless prevented by some one or more of the contingencies mentioned in sub-section (4) or (5).

(4) (a) Where a dispute about the interest of a proprietor or tenure-holder in an estate or tenure, or about the partition of an estate or tenure by metes and bounds, in respect of which compensation is payable, be pending on the 31st March, 1948, in a Court, other than the Federal Court, whether in any suit, appeal or other proceeding and was undisposed of at the date of vesting, the Court shall, on the application of any party to such a suit, appeal or proceeding filed within sixty days of the date of vesting, stay all further proceedings in respect thereof and refer all matters in dispute to a Tribunal appointed by the Provincial Government in this behalf.

(b) For the purposes aforesaid, the Tribunal to be appointed by the Provincial Government shall consist of three members, namely :—

(i) a Chairman who shall be—

(a) a Judge of the High Court, if the suit, appeal or proceeding be pending in the High Court ; or

(b) a District Judge, if the suit, appeal or proceeding be pending in any other Court ; and

(ii) two members to represent the respective parties to such suit, appeal or proceeding ; the person appointed as a member to represent any party shall be appointed on the recommendation of that party :

Provided that if any party does not recommend any person within the prescribed period, or the services of the person recommended are not

available within such period as the Provincial Government may consider reasonable, the Tribunal shall consist of only the High Court Judge or the District Judge as the case may be.

(c) If any vacancy occurs in the Tribunal so constituted, it shall be lawful for the Provincial Government to fill up the vacancy in the manner specified in sub-clause (b) and the proceeding shall be continued before such Tribunal as so re-constituted.

(d) No order of the Provincial Government constituting a Tribunal under this sub-section shall be called in question in any manner whatsoever.

(e) In deciding the matter referred to them, the Tribunal shall follow the procedure to be prescribed by the Provincial Government.

(f) The Tribunal shall have the same power regarding the summoning and attendance of witnesses and compelling the production of documents as a Civil Court has under the Code of Civil Procedure, Act V of 1908.

(g) Where the Tribunal consists of three members and there is a difference of opinion among them, the decision shall be according to the opinion of the majority.

(h) Every award or order made by the Tribunal under this sub-section shall be final and conclusive and shall be communicated to the Court which made the reference within four months from the date of reference or such further time as may be allowed by such Court and the Court shall thereupon proceed to pronounce judgment in terms of the award.

(i) It shall not be open to any party to challenge the award on any ground whatsoever and the order of the Court pronouncing judgment in terms of the award shall be final.

(j) The amount of compensation payable to the proprietor or tenure-holder in respect of such estate or tenure and all their rights and liabilities under this Act shall be determined on the basis of the order of the Court, referred to in clause (h).

(5) If the estate or tenure in respect of which the compensation is held by a limited owner or the holder of a life interest, the Compensation Officer shall keep the amount of compensation in deposit with the Collector of the district and the Collector shall direct the payment of the interest accruing on the amount of compensation to the limited owner or the holder of the life interest during his life time. Such amount shall remain deposited with the Collector until the compensation money or portion thereof after making payments, if any, under the proviso to this sub-section, is made over to any person or persons becoming absolutely entitled thereto :

Provided that nothing in this sub-section shall be deemed to affect the right of any limited owner or the holder of a life interest to apply to the District Judge for the payment of a part of the compensation money to defray any expenses which may be necessary to meet any legal necessity.

BIHAR (5)

The Bihar Land Reforms Act, XXX of 1950 (Bihar)

(Extracts)

Preamble.

Whereas it is expedient to provide for the transference to the State of the interests of proprietors and tenure-holders in land and of the mortgagees and lessees of such interests including interests in trees, forests, fisheries *jalkars*, ferries, *hats*, *bazars*, mines and minerals, and to provide for the constitution of a Land Commission for the State of Bihar with powers to advise the State Government on the agrarian policy to be pursued by the State Government consequent upon such transference and for the matters connected therewith.

It is hereby enacted as follows :

* * * *

2B. Act not to apply to land acquired under Land Acquisition Act, 1894 for certain purposes.—Nothing in this Act shall apply to any land acquired under the Land Acquisition Act, 1894 (1 of 1894) for the purposes of any industrial undertaking except to such portion thereof as is in possession of a tenant who has, before the commencement of the Bihar Land Reforms (Amendment) Act, 1960 acquired right of occupancy therein in accordance with the tenancy law of the area in which it is situated.

Explanation—(I) For the purpose of this section, the expression “industrial undertaking” shall mean—

(a) any industrial undertaking relating to—

- (i) Heavy industry.
- (ii) explosives,
- (iii) fertilizers,
- (iv) iron and steel,
- (v) cement,
- (vi) coal, and

(b) any other industrial undertaking which is declared by the State Government by a notification in the *Official Gazette*, to be an industrial undertaking,

(II) All notifications under sub-paragraph (b) of paragraph (1) shall, as soon as may be, after they are issued, be laid before the Houses of the Legislature of the State.

¹ Inserted by Bihar Land Reforms Act II of 1961.

3. **Notification vesting an estate or tenure in the State :—**(1) The State Government may, from time to time, by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State.

4. **Consequences of the vesting of an estate or tenure in the State.—**Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification under sub-section (1) of Section 3, the following consequences shall ensue, namely :

(a) Subject to the subsequent provisions of this Chapter, such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or *cutchery* for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, *jalkars*, *hats*, *bazars*, and ferries, and all other *sairati* interests as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under raiyats), shall with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act.

(b) All arrears of rents, including royalties, and all cesses together with interest, if any, due thereon for any period prior to the date of vesting, which were recoverable in respect of the estates or tenures of the proprietor or tenure-holder and the recovery of which was not barred by any law of limitation, shall vest in, and be recoverable by, the State, when such arrears, cesses and interest are due from any tenure-holder in respect of any such tenure shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amount of such arrears, cesses and interest from the compensation money payable to such tenure-holder under Section 32 when so ordered by the Collector ; and all rents including cesses and royalties accruing in respect of lands comprised in such estate or tenure on or after the date of vesting shall be payable to the State and not to the outgoing proprietor or tenure-holder and any payment made in contravention of this clause shall not be valid.

Explanation.—For the purpose of this clause, the expression “arrears of rent” shall include arrears in respect of which suits were pending on date of vesting or in respect of which decrees whether having the effect of rent decree or money decree were obtained before the date of such vesting and have not been satisfied and are not barred by limitation, and shall also include the cost allowed by such decrees.

(c) All arrears of revenue and cesses remaining lawfully due on the date of vesting in respect of any such estate shall after such date continue to be recoverable from the outgoing proprietor by whom they were payable and shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amount of such arrears and cesses

from the compensation money payable to such proprietor under Section 32 when so ordered by the Collector.

(d) No suit shall lie in any Civil Court for the recovery of money due from such proprietor or tenure-holder the payment of which is secured by a mortgage or is a charge on such estate or tenure and all suits and proceeding for the recovery of any such money which may be pending on the date of vesting shall be dropped.

(e) No such estate or tenure shall be liable to attachment or sale under the processes of any Court and any order of attachment passed in respect of such estate or tenure before the date of vesting shall cease to be in force.

(f) The Collector shall take charge of such estate or tenure and of all interests vested in the State under this section ;

Provided that nothing contained in this clause or in any other provision of this Act shall be deemed to authorise the Collector to take charge of any institution, religious or secular, of any trust or any building connected therewith or to interfere with the right of a trustee to apply the trust money to the objects of the trust.

(g) Where, by operation of this Act, the right to the possession of any estate or tenure or any part thereof vests in the State, the Collector may by written order served in prescribed manner, require any person in possession of such estate or tenure or any part thereof to give up possession of the same by a date specified in the order, and it shall be competent for the Collector to take or cause to be taken such steps and use or cause to be used, such force as in the opinion of the Collector, may be necessary for securing compliance with the said order or preventing any breach of the peace.

(h) The Collector shall have power to make inquiries in respect of the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or *cutchery* for the collection of rent of such estate or tenure or part thereof made or created at any time after the first day of January 1946, and may, with the previous sanction of the State Government and after giving reasonable notice to the parties concerned to appear and be heard, set aside any such settlement, lease or transfer, dispossess the person claiming under it and take possession of such property in the manner provided in clause (g) on such terms as may appear to the Collector to be fair and equitable, if the Collector is satisfied that such settlement, lease or transfer was made or created with the object of defeating any provisions of this Act, or obtaining higher compensation thereunder.

(i) After serving a notice in writing on the proprietor or tenure-holder for the production of such documents, registers and papers as are in his opinion necessary for the management of such estate or tenure, and if such notice is not complied with within forty eight hours or such further time as the Collector may allow, it shall be lawful for the Collector, or any officer, not below the rank of a Sub-Deputy Collector, authorised by him in writing in this behalf, to enter upon any land or building with

such assistance as he considers necessary and seize and take possession of such documents, registers and papers as are in his opinion necessary for the management of such estate or tenure.

Provided that no action under this clause shall be taken unless a requisition under Section 40 has not been complied with within the time fixed in the said requisition.

Note : For Assessment of Compensation, Appointment of Compensation Officer, *vide* s. 19, for Rates of Compensation, *vide* s. 24, and for Payment of Compensation, *vide* s. 32 of the Bihar Zamindari Abolition Act, *supra*.

Notes

Mines and Minerals (Regulation And Development) Act LXVII of 1957, Bihar Land Reforms Act, 1950 :—

Held, That the head lease (there was a sub-lease) granted on August 11, 1928 for a period of 49 years was converted into new statutory lease under Section 10 of the Bihar Land Reforms Act, 1950 and was not an "existing law" within Section 2 (c) of the Mining Lease (Modification of the Terms) Act, 1956 and the Controller of Mines had no jurisdiction to modify the lease. That a law providing for the premature termination of a mining lease was protected under Article 31A (e) of the Constitution and could not be attacked on the ground that it offended against Article 14, 19, or 31. That the Mining Leases (Modification of Terms) Rules, 1956 was valid and deemed to have been validly made under the Mines and Minerals (Regulation and Development) Act 1957. That the Controller had jurisdiction to terminate the lease as it expired long before July 1, 1961 but was not entitled to reduce the term of the lease from the date of the commencement of the Mines and Minerals (Regulation and Development) Act 1957, (a).

Bihar (6)

The Bihar Premises and Vehicle (Requisitions) Act, 1967

Bihar Act No. X of 1967

(Published in Bihar Gazette Ext. No 810 dated 28. 11. 1967)

(Extracts).

An Act to provide for the Requisitioning of premises and vehicles for storage and movement respectively of food stuffs, water, fodder for the cattle, medicine and for matters connected therewith.

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CHAPTER II

Requisition of Premises

3. *Power to requisition premises :—*(1) Whenever it appears to the State Government that any premises in any locality are needed or likely to be needed for storage of foodstuffs, water, fodder for the cattle and medicine or for any of these it may, by order in writing, requisition such premises :

Provided that no order requisitioning such premises shall be passed unless a reasonable opportunity has been given to the owner of premises and where it relates to premises in occupation of a tenant also to such tenant to show cause against the proposed order within such time to such authority and in such manner as may be specified by the order. Provided further that no premises exclusively used for residential, religious, charitable or educational purposes, shall be requisitioned under this section.

(2) An order under sub-section (1) shall be served as the case may be, on the owner of premises or the tenant in such manner as may be specified in the order.

(3) The State Government may, with a view to requisitioning any premises under sub-section (1) may by order require any person to furnish to such authority as may be specified in the order, such information in his possession relating to the premises as may be so specified.

(4) An order passed under sub-section (1) shall be final and whenever such order has been passed the State Government shall direct the Collector to take such further action as is necessary in connection with the requisition of the premises in accordance with the provisions of this Act.

(5) Without prejudice to any other powers conferred by this Ordinance the Collector may authorise any person to enter and inspect any premises between sunrise and sunset for the purpose of determining whether and if so in what manner, an order under this section should be made in relation to any premises or with a view to securing compliance with any order made under this Act.

Provided that no action under this sub-section shall be taken unless at least twenty four hours' previous notice is given to the person in actual occupation of the premises.

(6) In connection with any enquiry under this Act, the Collector may by written order require any person to produce for his inspection any document relevant to the enquiry at such time and place as may be specified in the order, and enforce the attendance of witnesses or compel the production of documents by the same means, and so far as may be, in the same manner as is provided in the case of Code of Civil Proceue, 1908 (5 f 1908).

4. *Power to order vacation of premises for execution of repairs of premises*:—(1) Where any premises are requisitioned under this Act, the Collector may by notice in writing—

(a) order the existing tenant of premises to vacate the premises within seven days of the receipt of notice :

(b) order the owner of premises to execute such repairs as may be specified in the order within such time as may be specified therein.

(2) If an owner of premises fails to execute any repairs in pursuance of an order under clause (b) the Collector may cause the repairs specified in the order to be executed at the expense of the owner and the cost thereof may be deducted from the compensation payable to owner.

5. *Disposal of premises after requisition* :—When the State Government has requisitioned any premises under sub-section (1) of section 3, it may use or deal with it in such manner as may appear to it to be expedient.

6. *Power of eviction from requisitioned premises for breach of terms of tenancy* :—(1) Where any person in possession of any requisitioned premises sub-lets premises without due authority the whole or any part of the premises or otherwise act in contravention of any of the terms, expressed or implied, of his tenancy or other like relationship credited by the State Government in respect of the premises, the Collector, may order in writing that such person or any other person found in occupation of premises to vacate the premises within four days of the receipt of the order.

(2) Action may be taken under sub-section (1) even if any proceedings for possession are pending in respect of the premises and upon such action being taken, the said proceedings, shall forthwith be vacated.

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Bihar (7)

BIHAR TOWN PLANNING AND IMPROVEMENT TRUST ACT, 1951

(Extracts)

71. *Modification of the Land Acquisition Act, 1894*.—For the purpose of acquiring land for the Trust under the Land Acquisition Act, 1894—

(a) the said Act shall be subject to the modifications specified in the Schedule ; and

(b) in case a Tribunal is constituted under Section 72—

(i) the Tribunal shall (except for the purposes of Section 54 of that Act) be deemed to be the Court ;

(ii) the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and

- (iii) the award of the Tribunal shall be deemed to be award of the Court under the Land Acquisition Act, 1894, and shall be final.

* * *

THE SCHEDULE

[See Section 71 (a)]

Further modifications in the Land Acquisition Act, 1894

1. After clause (e) of Section 3 of the Land Acquisition Act, 1894 (hereinafter in this Schedule referred to as "the said Act"), the following clause shall be deemed to be inserted, namely,—

“(ee) the expression ‘local authority’ includes the Board of Trustees for the improvement of (name of the town), constituted under Section 3 of the Bihar Town Planning and Improvement Trust Act, 1951.”

2. (1) The first publication of a notice of an improvement scheme under Section 46 of the Bihar Town Planning and Improvement Trust Act, 1951, shall be substituted for and have the same effect as publication in the Official Gazette and in the locality of a notification under sub-section (1) of section 4 of the said Act, except where a notification under sub-section (1) of section 4 or a declaration under section 6 of the said Act has been previously made and is in force.

(2) Proceedings under section 48 and sub-section (1) of Section 50 of the Bihar Town Planning and Improvement Trust Act, 1951, shall be substituted for and have the same effect as proceedings under Section 5-A of the said Act.

(3) Subject to the provisions of paragraphs 6 and 7 of this Schedule, the issue of a notice under clause (c) of sub-section (3) of Section 39 of the Bihar Town Planning and Improvement Trust Act, 1951, in the case of land proposed to be acquired in pursuance of that clause, and in any other case the publication of a notification under Section 52 of that Act shall be substituted for and have the same effect as a declaration under section 6 of the said Act, except where a declaration under the last mentioned section has been previously made and is in force.

3. In section 15 of the said Act, for the word and figures “and 24”, the figures, word and letter “24 and 24-A” shall be deemed to be substituted.

4. In sub-section (3) of Section 17 of the said Act, after the word and figures “section 24”, the words, figures and letter “or section 24-A” shall be deemed to be inserted.

5. After Section 17 of the said Act, the following section shall be deemed to be inserted, namely,—

“17-A. Transfer of land to Trust.—In every case referred to in Section 16 or Section 17, the Collector shall, upon payment of the cost of acquisition make over charge of the land to the Trust and the land shall thereupon

vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition."

6. (1) In sub-section (1) of Section 23 of the said Act, for clauses first and sixthly, the following clauses shall respectively be deemed to be substituted, namely,—

"first, the market-value of the land according to the use to which the land has been put during the preceding five years—

- (a) at the date of the issue of the notice under clause (b) of sub-section (3) of Section 39 of the Bihar Town Planning and Improvement Trust Act, 1951, in case the land is proposed to be acquired in pursuance of that clause ; and
- (b) at the date of the first publication of the notice under section 55 of that Act, in any other case."

"sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the date referred to in paragraph (a) or paragraph (b), as the case may be, of clause first, and the date on which the Collector takes possession of the land."

(2) In the same section, to sub-section (2), the following proviso shall be deemed to be added, namely :—

"Provided that this sub-section shall not apply where the land acquired is situated in an area which is declared by the State Government to be a congested or slum area and the land is not in the actual possession of the owner."

(3) In the same section, after sub-section (2), the following sub-section shall be deemed to be added, namely,—

"(3) For the purposes of clause first of sub-section (1) of this Section—

- (a) if the market-value of the land has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;
- (b) if any person, otherwise than in accordance with the provisions of this Act, erects, re-erects, adds to, or alters any wall or building so as to make the same project into the street alignment or beyond the building line prescribed by any scheme made under this Act, then, any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded.
- (c) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary use ;
- (d) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such over-crowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from over-crowding :

Provided that clauses (c) and (d) shall not apply in the case of a building which is in the actual occupation of the owner."

7. For clause 'seventhly' of Section 24 of the said Act, the following clause shall be deemed to be substituted, namely,—

"Seventhly, any outlay on additions or improvements to land acquired which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

8. After Section 24 of the said Act, the following section shall be deemed to be inserted, namely :—

"24-A. Further provisions for determining compensation.—In determining the amount to be awarded for any land acquired for the Trust under this Act, regard shall also be had to the following provisions, namely,—

- (1) When any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land.
- (2) If, in the opinion of the Court, any building is in a defective state from a sanitary point of view or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Court considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state.
- (3) If, in the opinion of the Court, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

9. After Section 48 of the said Act, the following section shall be deemed to be inserted, namely,—

"48-A. Compensation to be awarded when land not acquired within two years.—(1) Where the Collector has not made an award under section 11 in respect of any land within a period of two years from the date of the publication of the declaration under section 6 or of the issue of a notice under clause (e) of sub-section (3) of Section 39 of the Bihar Town Planning and Improvement Trust Act, 1951, or of the publication of a notification under Section 52 of that Act, as the case may be, the owner of the land shall, unless he has been responsible for the delay to a material extent, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

- (2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

Bihar (8)

THE DARBHANGA IMPROVEMENT ACT, 1934

(Extracts)

41. Power of the Trust to acquire land under the Land Acquisition Act, 1894.—(1) The Trust may acquire land under the provisions of the Land Acquisition Act, 1894 (in this section referred to as the said Act), for carrying out any of the purposes of this Act.

(3) For the purpose of acquiring lands under the said Act for the Trust, the said Act shall be subject to the following modifications,—

- (i) in the construction of Section 4 of the said Act, the publication of a notice of an Improvement Scheme under Section 27 shall be deemed to be the publication of a notification and of a public notice required to be given by the Collector under sub-section (1) of Section 4 of the said Act ;
- (ii) where a notice as prescribed by Section 28 has been served, the provisions contained in Section 5-A of the said Act shall not apply ; and
- (iii) in the construction of Section 6 of the said Act, the publication of a notification under Section 32 shall be deemed to be the date of the publication of the declaration under Section 6 of the said Act for the purposes of Section 23 sixthly and Section 24 fourthly of the said Act.

PART III

CHAPTER IV

Bombay (1)

Bombay Reorganisation Act (No. 11) of 1960

(Summary)

Abolition of State of Bombay and formation of the States of Gujarat and Maharashtra :-

It should be noted that by virtue of the Bombay Reorganisation Act 1960 (Central Act 11 of 1960) that received the assent of the President on 25th April 1960 and was published in the Gazette of India, Extra-ordinary, Pt. II on same date, the State of Bombay was abolished and was reconsti-

tuted as two separate States, viz., Gujarat and Maharashtra. The 1st Schedule of the Constitution was amended and for entry '4' Gujarat and after entry '7' words "8, Maharashtra" were inserted. The re-constitution was effective from the "appointed day" which means the 1st day of May, 1960.

Section 87 of the said Act provides that the reorganisation as provided in Part II of said Act shall not be deemed to have effected any change in the application of existing laws of Bombay to the new territories unless otherwise provided by competent legislatures of the new States.

Section 88 provides that the State of Maharashtra or Gujarat may, before the expiration of one year from the appointed day, by order, make such adaptations or modifications whether by way of repeal or amendment until altered, repealed or amended by a competent legislature.

Section 89 provides that notwithstanding that no provision or insufficient provision has been made under Section 88 for the adaptation of any law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law, may construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the Court, Tribunal or authority.

Section 28 provides that as from the appointed day there shall be a separate High Court for the State of Gujarat and the existing Bombay High Court shall become the High Court of Maharashtra.

Notes. In *Jayantilal Amratlal Shodan vs. F. N. Rana, Commissioner, Baroda*, (a) it was held that the effect of the Presidential modification under Article 258 clause 1 of the Constitution is that the Land Acquisition Act, 1894 must be deemed to have been *pro tanto* amended to the effect that wherever the expression "Appropriate Government" occurs in the Act in relation to provisions for acquisition of land for the purpose of the Union, the words "appropriate Government or the Commissioner of the Division having territorial jurisdiction over the area in which the land is situate" would be deemed to be substituted and the impugned notification dated 24. 7. 59 would have the force of law within the meaning of section 83 read with section 2 (d) of the Bombay Reorganisation Act 1950 and continue to be in force even after the State of Gujarat had come into existence on May 1, 1960.

Bombay (2)

The Bombay Land Requisition Act XXXIII of 1948

(As amended by Bombay Act II of 1950 and adapted and modified by Adaptation of Laws Order, 1950)

Act to provide for the requisition of land for the continuance of requisition of land and for certain other purposes.

Whereas the Governor—General in exercise of the powers conferred on him by sec. 104 of the Government of India Act, 1934, has by the Govern-

(a) *Jayantilal Amratlal Shodan v. F. N. Rana, Commissioner, Baroda*, 1964 (II), S. C. A. 284.

ment of India, Ministry of Law, Notification No. F311/57-C & G. dated 21st October 1947, empowered all Provincial Legislatures to enact laws with respect to the requisition of land.

And whereas it is expedient to provide for the requisition of land for the continuance of requisition of land and for certain other purposes ;

It is hereby enacted as follows ;—

1. Short Title.—The Act may be called the Bombay Land Requisition Act, 1948.

2. Extent. (1) This Act shall extend to the areas specified in the Schedule hereto annexed and shall continue to extend to any such area notwithstanding that the area ceases to be of the description therein specified.

(2) The (State) Government may, at any time by like notification, direct that any or all of the provisions of this Act shall cease to extend to any area and on such date as may be specified in the notification ; and on that date the said provisions shall cease to be in force in such area.

3. Duration.—(1) This Act shall remain in force up to and inclusive of the 31st day of ¹[December 1972] and shall then expire.

(2) Sec. 7 of the Bombay General Clauses Act, 1904, shall apply upon the expiry of this Act or upon this Act or any provision thereof ceasing to be in force in any area, as if it had then been repealed by a Bombay Act.

Notes :—The Bombay High Court held that the power given by the Legislature to the provincial Government to extend the duration of an Act does not constitute delegated legislation, (b). It was held that conditional legislation of this character was within the legitimate powers of a sovereign legislature.

4. Definitions.—In this Act, unless there is anything repugnant to the subject or context,—

(1) “land” includes benefits to arise out of land, and buildings and all things attached to the earth or permanently fastened to the buildings or things attached to the earth ;

(2) “landlord” means any person who is, for the time being receiving, or entitled to receive rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person, or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant ; and includes any person, not being a tenant, who from time to time derives title under a landlord ; and further includes in respect of his sub-tenant a tenant who has sublet any premises ;

¹ The figures ‘1968’ were substituted at first to ‘1970’ by the Bombay Land Requisition (Gujarat Extension of Duration) Act No. XX of 1966, S. 2, published in Gujarat Govt. Gazette, Ext. P. IV, Dt. 24-10-66 but again the figures ‘1970’ were substituted by figures ‘1972’ by the Bombay Land Requisition (Extn. of Duration) Act (Maharashtra Act) No. XXXIV of 1970 published in Maharashtra Govt. Gazette Ext. Pt. IV, No. 44, Dt. 30-12-70.

(b) *State of Bombay v. Hemant Santlal*, A. I. R. 1952 Bom. 16 ; 53 Bom. L. R. 837.

(3) "premises" means any building or part of a building let or intended to be let separately including—

- (i) the garden, grounds, garages and outhouses, if any, appurtenant to such building or part of a building,
- (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house ;

(4) "prescribed" means prescribed by rules made under this Act ;

(5) "to requisition" means in relation to any land to take possession of the land or to require the land to be placed at the disposal of the [State] Government.

Notes :—The burden is on the person on whom the requisition order is served to show that the premises were not the premises within the meaning of Sec. 4 (3), that it were not 'let' or 'intended to be let,' (c). The burden is not on the State Government so long as the order of requisition is *prima facie* legal.

5. Requisition of land.—(1) If in the opinion of the [State] Government it is necessary or expedient so to do, the [State] Government may by order in writing requisition any land for the purpose of the state or any other public purpose :

Provided that no building or part thereof wherein the owner, the landlord or the tenant, as the case may be, has actually resided for a continuous period of six months immediately preceding the date of the order shall be requisitioned under this section.

(2) Where any building or part thereof is to be requisitioned under sub-sec. (1), the [State] Government shall make such enquiry as it deems fit and make a declaration in the order of requisition that the owner, the landlord or the tenant, as the case may be, has not actually resided therein for a continuous period of six months immediately preceding the date of the order and such declaration shall be conclusive that the owner, landlord or tenant has not so resided.

Notes :—Section 5 confers a power on the State Government to requisition land and also casts a duty on the Government to satisfy itself that in the opinion of the State Government it is necessary or expedient to requisition the land or property (d). Not only the power but also the duty which is attached to the exercise of the power can be delegated under Sec. 15.

In *State of Bombay v. Bhanji Moonji*, (e) the facts were that the housing situation in Bombay was acute, largely due to the influx of refugees. A race of proprietors in the shape of rapacious landlords who thrived on the misery of those who could find no decent roof over their heads, sprang into being. All these necessitated the Government to take drastic steps.

(c) *State of Bombay v. Bhanji Moonji*, A. I. R. 1955, S. C. 41 : 1955, S. C. R. 777 reversing A. I. R. 1952 Bom. 368.

(d) *Bhagwant Kaur v. State of Bombay*, A. I. R. 1952, Bom. 461 : I. L. R. (1953), Bom. 44.

(e) A. I. R. 1955, S. C. 41 reversing A. I. R. 1952 Bom. 368.

This necessitated the Government introducing another class of beneficiaries. The first informant of such 'suppressed vacancies' or 'nominal occupation' was given priority in respect of accommodation, if the informant was genuinely in need of such. The number of applicants were so large that Government could not cope with the situation. There was not enough accommodation even for Government servants and Government purposes. So the Government declared that it could not consider further applications. The result was, at the time of allotment, it was apparent that there was no intention to benefit public at large but to keep a privileged preserve for Government servants. In order to put pressure on landlords and tenants to disclose vacancies which could be added to this privileged pool, rewards were handed out to houseless first informants by giving them the vacancies they were instrumental in discovering.

The question arose whether the action of the Government was Constitutional, and if the public purpose was served by their action. The court held that the acts of the authorities were *intra vires* as they really served public purpose, which in short is finding accommodation for the homeless. If therefore a vacancy is allotted to a person who is in fact houseless, the purpose is fulfilled. This is also in the case of the 'informant'. Unless fraud, invidious discrimination, nepotism, bribery or corruption is made out, the action of the Government cannot be *ultra vires*. It was further held that a wide discretion must be left to Government to carry out the policy of the Act. Some picking and choosing is inevitable when the vacant houses are too few compared to the number of applicants.

The Bombay Act of 1948 was held *intra vires* in *Bhanji Moonjis* case (e). The Act could not be held invalid merely because it did not state in explicit terms, the public purpose. It was held that it was unnecessary to state in express terms in the statute the precise purpose for which property is being taken, provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for the purpose of the state or for the purposes of the public and that the intention was to benefit the community at large.

Order under Sec. 5 (1) is administrative :—In *Alasakia Somajee v. Collector of Nasik* (f), it was pointed out that an order of requisition made under Sec. 5 (1) is an administrative order and is not a judicial or quasi-judicial order. Hence, no writ of *certiorari* can lie to correct that order. The power under Sec. 5 (1) is very wide. The Government can requisition any land including buildings, residential as well as non-residential. The only limitation on their power is the proviso to Sec. 5 (1) that no building or part thereof can be requisitioned if the landlord or tenant has actually resided in that building for a continuous period of six months (g). The order can be upheld only if it is for a State

(f) *Alasakia Somajee v. Collector of Nasik*, A. I. R. 1951, Bom. 131 : 53 Bom. L. R. 369.

(g) *Maneklal Amratlal v. Collector of Ahmedabad*, I. L. R. (1954) Bom. 473 : A. I. R. 1954, Bom. 235.

or a public purpose as stated in Sec. 5 (1) and Sec. 6 (4). It is not necessary to set out the purpose of the requisition in the order under Secs. 5 (1) and 6 (4). It is better if it is so given, since it will save proof. Otherwise, proof of the purpose must be given in other ways (h).

Whatever the nature of the building, if the Government wishes to requisition a building, it must hold the inquiry under Sec. 5 (2) and must also make the declaration. These duties are imposed just to see that the Government applied its mind to what the inquiry resulted in and made a formal declaration on the face of the order itself (i).

The order of the Government of Bombay passed under Sec. 5 (1) requisitioning a part of a building for housing an officer of the State Road Transport Corporation was held as an order for a 'public purpose.' Though *prima facie* the Government is the best judge as to the 'public purpose,' the court has jurisdiction and it is their duty to determine the matter whenever such a question is raised. The words 'opinion of State Government' in Sec. 5 signifies the subjective opinion only (k).

Notes :—Proceedings initiated under the L. A. Act after passing the order under this Act—

On the contention that the proceeding having been initiated under this Act which is a temporary Act, there can be no acquisition for a permanent public purpose and the subsequent issue of notification under Section 4 of L. A. Act for same land, is void.

held—(1) re-habilitation of flood sufferer is a public purpose.

(2) The words 'public purpose' in the Act are sufficiently wide enough to include any public purpose, temporary or permanent and

(3) There is no antithesis between the power to requisition (under this Act) and the power of compulsory acquisition (under L. A. Act I of 1894)

(4) Accordingly the initiation of proceedings under the L. A. Act after requisitioning lands under Section 5 (1) of this Act is not an abuse of power under this Act and so not void (l).

6. Requisition of vacant premises.—(1) If any premises situate in an area specified by the [State] Government by notification in the official Gazette are vacant on the date of such notification and whenever any such premises are vacant or become vacant after such date by reason of the landlord, the tenant, or the sub-tenant, as the case may be ceasing to occupy the premises or by reason of the release of premises from requisition or by reason of the premises being newly erected or reconstructed or for any other reason, the landlord of such premises shall give

(h), *State of Bombay v. Bhanji Moonji*, A. I. R. 1955, S. C. 41, applies A. I. R. 1922, S. C. 252.

(i) *Maneklal Amratlal v. Collector of Ahmedabad*, I. L. R. (1954) Bom. 473 : A. I. R. 1954, Bom. 235.

(j) *State of Bombay v. R. S. Nanji*, A. I. R. 1956, S. C. 294.

(k) *Collector of Akola v. Ramchandra and Ors.*, 1968 (1) S. C. J. 525.

(l) *Lilavati Bai v. State of Bombay*, A. I. R. 1957, S. C. 521.

intimation thereof in the prescribed form to an officer authorized in this behalf by the [State] Government.

(2) The intimation shall be given by registered post within one month of the date of the notification in the case of premises which are vacant on such date and in other cases within seven days of the premises becoming available for occupation.

(3) A landlord shall not, without the permission of the [State] Government, let, occupy, or permit to be occupied before such premises giving the intimation and for a period of one month from the date on which the intimation is received.

(4) Whether or not an intimation under sub-sec (1) is given and notwithstanding anything contained in Sec. 5, the [State] Government may, by order in writing—

(a) Requisition the premises for the purpose of the State or any other public purpose and may use or deal with the premises for any such purpose in such manner as may appear to it to be expedient ; or

(b) require the landlord to let the premises to specified persons or class of persons or in specified circumstances.

Provided that where an order is to be made under clause (a) or (b) requisitioning or requiring to let premises in respect of which no intimation is given by the landlord, the [State] Government shall make such inquiry as it deems fit and make a declaration in the order that the premises were vacant or had become vacant, on or after the date referred to in sub-sec. (1) and such declaration shall be conclusive that the premises were or had so become vacant.

Provided further that no order under clause (b) shall be made without hearing the landlord if the landlord resides in the building of which the premises forms a part.

(5) Any landlord who fails to give such intimation within the period specified in sub-sec. (2) shall, on conviction, be punishable with imprisonment for a term which may extend to three months with fine or with both and landlord who lets, occupies or permits to be occupied the premises in contravention of the provision of sub-sec. (3), shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall also be punished with fine.

Explanation.—For the purposes of this section,—

(a) premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises or otherwise, notwithstanding any instrument or occupation by any other person prior to the date when such landlord, tenant or sub-tenant so ceases to be in occupation ;

(b) premises newly erected or re-constructed shall be deemed to be or become vacant until they are first occupied after such erection or re-construction,

Notes :—When the interest of a section selected by the Government *i. e.*, first informants of suppressed vacancies is served by the policy of the Government, it is impossible to hold that it can possibly be the interest of the general public so as to constitute a public purpose within Sec. 6. (m). But this view of the High Court of Bombay was disagreed to by the Supreme Court which upheld the order of requisition (n).

A declaration made by the Government that there is vacancy is conclusive both as to the facts and also as to the legal requirements which the law makes necessary (o).

The words 'or otherwise' occur in Explanation (a) to Sec. 6, shows that the Legislature intended to cover all possible cases of vacancy occurring due to any reason whatsoever (p).

The order under Sec. 6 (4) (a) is not a judicial or quasi-judicial order as between the Government and the other parties named. So, even if one party was dead on the date of the order, the order is quite valid and binding on his heirs who are in possession of the premises (p).

7. Continuance of requisition.—(1) Notwithstanding anything contained in the Requisitioned Land (Continuance of Powers) Act, 1947, the [State] Government may, by order in writing, direct that any land which was continued under requisition under the said Act, shall continue to be subject to requisition under this Act for any purpose of the State or any other public purpose when it is released from requisition under the said Act or ceases to be subject to requisition for any reason ; and the [State] Government may for any such purpose use or deal with the land so continued to be subject to requisition in such manner as may appear to it to be expedient.

(2) In respect of the continued subjection of the land to requisition under sub-sec. (1), compensation shall be determined and paid in accordance with provisions of this Act and of the rules made thereunder :

Provided that all agreements and awards made in relation to the land in respect of the payment of compensation for the period before it was continued to be subject to requisition under sub-sec. (1) shall continue to be in force and shall apply to the payment of compensation for the period of requisition under this Act.

8. Payment of compensation.—When any land is requisitioned or is continued to be subject to requisition under this Act, there shall be paid, subject to the provisions of Sec. 7, compensation to persons having interest in such land the amount of which shall be determined by an officer authorized in this behalf by the [State] Government who shall hold an inquiry in the manner prescribed. The officer shall determine such amount of compensation as he deems just having regard to all the circumstances of the case ; and in particular he shall be guided by the provisions of

(m) A. I. R. 1952, Bom. 476.

(n) A. I. R. 1955, S. C. 41, reversing A. I. R. 1952, Bom. 368.

(o) *Mohsinali Mohammad Ali v. State of Bombay*, A. I. R. 1951, Bom. 303.

(p) *Lilavati Bai v. State of Bombay*, A. I. R. 1957 S. C. 521.

sub-sec. (1) of Sec. 23 and Sec. 24 of land Acquisition Act, 1894, in so far as they can be made applicable.

(2) Where there are several persons interested in the land, the officer shall decide the dispute, if any, as to the apportionment of the amount of compensation or any part thereof or as to the persons to whom the same or any part thereof is payable.

(3) An appeal shall lie against the decision of the officer under sub-sec. (1) or (2), except in cases where the total amount of compensation in respect of the land does not exceed an amount prescribed in this behalf by the [State] Government,—

(a) in Greater Bombay, to the High Court, and

(b) elsewhere, to the District Court,

such appeal shall be made within a period of sixty days from the date of the decision.

¹[*Explanation*.—For the purposes of this section, the total amount of compensation shall mean in cases where the amount of compensation is paid in a lump sum, such sum, and in cases where it is paid periodically, such multiple of the amount of compensation as may be prescribed].

(4) No further appeal shall lie against any decision in appeal under sub-sec. (3).

Notes :—In proceedings for ascertaining compensation the allottees have no *locus standi*. It is only between the Government and the owner that the proceedings lie. Section 8 imposes an obligation upon the Compensation Officer to make an enquiry as to compensation. But an application in this regard by the owner is not a condition precedent. So, even if proceedings are initiated on request made by the allottees, they cannot be regarded as without jurisdiction and consequently not maintainable (g).

Where it is requisition for a time, ownership is not affected and so the compensation is not the value of the property but the value of user to which he is entitled and of which he is under the authority of law expropriated. It has to be a periodic payment till the property is relinquished. So in such circumstances the word 'Land' in Sec. 23 (1) & Sec. 24 of the Land Acquisition Act must be construed as 'user of land'; and the word 'market value' in Sec. 23 (1) must mean the periodic payment which a willing owner may expect to receive in the open market from a willing transferee as consideration for parting with the right of user in favour of the transferee who is at liberty at any time to abandon the transfer but who cannot be compelled so long as he is unwilling to surrender it.

²[**8.A. Landlord's duty to execute necessary repairs.**—Where any premises requisitioned or continued under requisition under this Act, the State Government may, subject to any agreement entered into by the appropriate Government with the landlord of the premises, whether such premises are requisitioned or continued under requisition

¹ This Explanation was added by Bom. Act 2 of 1950, S. 3.

(g) *Dawoodali Rahamuttullah v State of Bombay*, A. I. R. 1954, Bom. 323 : I. L. R. (1954), Bom. 752.

² Secs. 8-A and 8-B were inserted, by Bom. Act 2 of 1950, S. 4.

either before or after the coming into force of the Bombay Land Requisition (Amendment) Act, 1950, by order in writing direct him to execute such repairs as shall in its opinion be necessary or sufficient to keep the premises in a good and tenantable condition and as may be specified in the order, within the time mentioned therein. If the landlord fails to execute such repairs, the State Government may cause such repairs to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the compensation payable to the landlord.]

Notes :—Power of Government to determine compensation—

Section 8-A (1) only empowers the Government to satisfy itself as to the legality, propriety or regularity of the enquiry or proceeding held under Sec. 8. If Government finds that there has been no proper enquiry under Sec. 8 or that it was irregular because it has not been conducted in the manner laid down in the rules made under Sec. 19, it may set aside the order passed by the enquiry officer under Sec. 8 and remand the case back to him for fresh enquiry.² But it cannot itself hold a fresh enquiry and substitute its own order of compensation for that made by the enquiry officer. This construction will also preserve the right of appeal conferred by Sec. 8 and not make it ineffective. For if the claimant is dissatisfied with the compensation awarded to him as a result of the fresh or further enquiry, he can appeal against the order of compensation. (r)

²[8-B. Vacation of requisitioned land and recovery of dues as arrear of land revenue.—(1) . Where the State Government has either before or after the coming into force of the Bombay Land Requisition (Amendment) Act, 1950, allotted to any person any land requisitioned or continued under requisition under this Act or where any person continues or is permitted to continue to remain in occupation or possession of such land, the State Government may, notwithstanding any thing contained in any law for the time being in force, by order in writing direct the person to whom such land is allotted or the person who continues or is permitted to continue to remain in occupation or possession of such land or any other person for the time being in occupation of such land, to vacate the same within such period as may be specified in the order and deliver possession thereof to the officer authorized in this behalf by the State Government.

(2) If any person to whom any such land is allotted by the State Government fails to pay to the State Government any sum which he is liable to pay under the terms and conditions subject to which such land is allotted to him or if any person who continues or is permitted to continue to remain in occupation or possession of such land fails to pay any amount of compensation which the State Government determines as the amount payable by him for such occupation or possession, such sum or amount due whether before or after the coming into force of the Bombay Land Requisition (Amendment) Act, 1950, shall, without prejudice to any

(r) *Kharodawalla v. State of Bombay*, 59 Bom. L R. 1221 ; I. L. R. (1958) Bom. 986.

² *Ibid.*

other mode of recovery, be recovered from him or any person for the time being in occupation of the land as an arrear of land revenue.

(3) The allotment of any land to any person, or the continuance of any person or the permission to any person to continue to remain, in occupation or possession of any land, referred to in sub-sec. (1) shall be deemed to be a licence, in favour of such person for the use and occupation of the said land].

9. Release from requisition.—(1) The [State] Government may, at any time, release from requisition any land requisitioned or continued to be subject to requisition under this Act.

(2) (a) Upon such release the land shall be restored as far as possible in the same condition in which it was on the date on which the [State] Government was put in possession thereof, and the [State] Government shall pay compensation for deterioration, if any, caused to the land otherwise than by reasonable wear and tear or irresistible force :

Provided that nothing in this sub-section shall apply to any structures, trees or crops standing on the land on the date on which the [State] Government took possession thereof and in respect of which compensation has been paid.

(b) The officer authorized in this behalf by the [State] Government shall determine such amount of compensation as he deems just and his decision, subject to an appeal to the [State] Government shall be final. Such appeal shall be made within a period of thirty days from the date of the decision.

(3) When any land is to be released from requisition, the [State] Government may, after making such inquiry, if any, as it deems fit, specify by order in writing the person to whom possession of the land shall be given.

(4) The delivery of possession of the land to the person specified in an order made under sub-sec. (3) shall be a full discharge of the [State] Government from all liability in respect of such delivery, but shall not prejudice any rights in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(5) Where the person to whom possession of any requisitioned land is to be given cannot be found and has no agent or other person empowered to accept delivery on his behalf, the [State] Government shall cause a notice declaring that the land is released from requisition to be affixed on some conspicuous part of the land and shall publish the notice in the Official Gazette.

(6) When a notice referred to in sub-sec. (5) is published in the official Gazette, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof ; and the [State] Government shall not be liable for any compensation or other claim in respect of the land for any period after the said date.

(7) For the purpose of releasing any land from requisition, the [State] Government may, by order direct the person to whom the [State] Government had given possession of such land and other person, if any, in occupation of such land to deliver possession thereof to the officer authorized in this behalf by the [State] Government.

Notes : The Collector is competent to order party in possession to vacate premises on de-requisitioning of property and it is not for the Collector to consider whether there is any private arrangement between the person who was in possession and the Collector with respect to the tenancy of the premises after the de-requisitioning and the Collector would not be bound by any such agreement. (s).

19-A. Power of Government to make allottee tenant of premises requisitioned :—(1)—Notwithstanding anything contained in the foregoing provisions of this Act, it shall be lawful at any time to the State Government to direct by an order in writing, that any person to whom any premises requisitioned or intended to be subject to requisition under the provisions of this Act, has been allotted and who has been put in the use and occupation thereof shall continue in possession thereof as a tenant and the said premises shall be deemed to have been let by the landlord to such person on payment of rent as specified in the order.

(2) On the making of such order the premises shall be deemed to be released and the compensation, if any, due in respect of such premises shall be determined and paid to the person entitled thereto as if such premises were actually released under Section 9.

(3) Nothing in this section shall affect the right of the landlord or the person continued in possession as a tenant to apply to a competent authority for the fixation of the standard rent under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, by reason only of the fact that the amount of the rent to be paid in respect of the premises is specified in the order made under sub-sec. (1).

10. Power of inquiry.—For the purposes of holding an inquiry under Sec. 8, the authorized officer shall have the same powers as are vested in civil courts in respect of—

- (a) proof of facts by affidavits,
- (b) summoning and enforcing the attendance of any person and examining him on oath,
- (c) compelling the production of documents, and
- (d) issuing commissions for the examination of witnesses.

11. Power to take possession.—(1) Any officer authorized in this behalf by the [State] Government by a general or special order may take possession of any land in respect of which an order has been made under Sec. 5 or 6 [or sub-section (1) of Sec. 8-B] or sub-sec. 7 of Sec. 9 and may take or cause to be taken such steps and use or cause to be used such force as may, in the opinion of such officer, be reasonably necessary for taking possession of such land.

¹ S. 9 A was inserted by Bombay Act. 2 of 1950 S. 5.

(s) *Kantendra Joymukhlal Mazumdar v. Collector of Baroda*, A.I.R. 1966 S.C. 89.

(2) The [State] Government may, after giving 15 clear day's notice to the person from whom possession of the land has been taken under sub-sec. (1), remove or cause to be removed or dispose of by public auction any property remaining on such land.

(3) Where property is sold under sub-sec. (2), the sale proceeds shall, after deducting the expense of sale, be paid to such person or persons who may appear to the [State] Government to be entitled to the same.

12. Power to obtain information.—(1) Any officer authorized in this behalf by the [State] Government by a general or special order may, with a view to carrying out the purposes of this Act, by order require any person to furnish to him such information in such person's possession relating to any land which is requisitioned or is continued under requisition or is intended to be requisitioned under this Act.

(2) Every person required to furnish such information as is referred to in sub-sec. (1) shall be deemed to be legally bound to do so within the meaning of Secs. 176 and 177 of the Indian Penal Code.

13. Publication and service of orders.—(1) Every order made under Secs. 5, 6, 7, ¹[8-A or 8-B or 9-A or] sub-sec. (7) of Sec. 9 or Sec. 12 shall—

(a) if it is an order of a general nature of affecting a class of persons, be published in the manner prescribed by rules made in this behalf ;

(b) if it is an order affecting an individual, corporation, or firm, be served in the manner provided for the service of a summons in Rule 2 of Order XXIX or Rule 3 of Order XXX, as the case may be, in the First Schedule of the Code of Civil Procedure, 1908 ;

(c) if it is an order affecting an individual person other than a corporation or firm, be served on the person—

(i) personally, by delivering or tendering to him the order, or

(ii) by post, or

(iii) where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or worked for gain.

(2) Where a question arises whether a person was duly informed of an order made in pursuance of Secs. 5, 6, 7, ²[8-A or 8-B or 9-A or], sub-sec. (7) of Sec. 9 or Sec. 12 compliance with the requirements of sub-sec. (1) shall be conclusive proof that he was so informed ; but failure to comply with the said requirements shall not preclude proof by other means that he was so informed or affect the validity of the order.

14. Power to enter and inspect land.—Without prejudice to any powers otherwise conferred by this Act, any officer or person empowered in this behalf by the [State] Government by general or special order may enter and inspect any land for the purpose of determining whether and, if so, in what manner, an order under this Act should be made in relation to

¹ These words, brackets, figures and letter were inserted, *ibid*, S. 6.

² The figures, letters and words "8-A or 8-B or 9-A or" were inserted by Bom. Act 2 of 1950, S. 7.

such land, or with a view to securing compliance with any order made in relation to such land, or with a view to securing compliance with any order made under this Act.

15. Delegation of functions.—The [State] Government may, by order notified in the official Gazette, direct that any power conferred or any duty imposed on it by this Act shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer, not being in the opinion of the [State] Government below the rank of a Collector, as may be so specified.

16. Exemption.—The [State] Government may, by rules exempt any land from the provisions of Sec. 5 or 6 or both on such terms and conditions as may be specified in the said rules.

17. Protection of action taken under Act.—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act or any order made thereunder.

(2) Save as otherwise expressly provided under this Act no suit or other legal proceeding shall lie against the [State] Government for any damage caused or likely to be caused by anything in good faith done or intended to be done under this Act, or any order made thereunder.

18. Officer to be deemed public servant.—Every officer authorized or empowered by the [State] Government to exercise any power or to perform any duty under this Act shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code.

19. Power to make rules.—(1) The [State] Government may, by notification in the official Gazette, make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (i) the form in which intimation shall be given under sub-section (1) of Sec. 6 ;
- (ii) the manner of holding an inquiry under sub-section (1), and the amount of compensation to be prescribed under sub-section (3) of Sec. 8 ;
- (iii) levy of court-fees in respect of appeals under Secs. 8 and 9 ;
- (iv) exemption of any land from the provisions of Sec. 5 or 6 or both and the terms and conditions on which the land shall be exempted ;
- (v) any other matter which under this Act is to be or may be prescribed.

20. Repeal.—The Bombay Land Requisition Ordinance 1947, is hereby repealed ; and it is hereby declared that the provisions of Secs. 7 and 25 of the Bombay General Clauses Act, 1904 shall apply to the repeal as if that Ordinance were an enactment.

(2) Notwithstanding the repeal of the said Ordinance and anything contained in this Act,—

- (i) any intimation given under sub-sec. (1) of Sec. 5 of that Ordinance within a period of seven days prior to the commencement of

this Act shall be deemed to have been given under the corresponding provision of this Act ;

- (ii) any order made under the said Ordinance requisitioning any land shall be deemed to be made under this Act ;
- (iii) any land requisitioned or continued to be subject to requisition under the said Ordinance shall be deemed to be requisitioned or continued to be subject to requisition under this Act.

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SCHEDULE

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|------------------------------|-------------------------|
| 1. City of Bombay. | 7. Poona District. |
| 2. Bombay Suburban District. | 8. Sholapur District. |
| 3. Thana District. | 9. Ahmednagar District. |
| 4. Ahmedabad District. | 10. Belgaum District. |
| 5. Surat District. | 11. Dharwar District. |
| 6. Nasik District. | |

Bombay (3)

The Bombay Land Requisition (Gujarat Extension of Duration) Act No. 20 of 1966.

An Act to Extend the Duration of the Bombay Land Requisition Act 1948.

It is hereby enacted in the Seventeenth year of the Republic of India as follows :—

1. **Short Title** :—This Act may be called the Bombay Land Requisition (Gujarat Extension of Duration) Act, 1966.

2. *Amendment of Section 3 of Bombay Act XXXIII of 1948*—In Section 3 of Bombay Land Requisition Act 1948 (Bombay XXXIII of 1948) in sub-section (1) for the words and figures “December 1966,” the words and figures “December 1970” shall be substituted.

Bombay (4)

The Land Acquisition (Bombay Amendment) Act (IV of 1948)

An Act to amend the Land Acquisition Act 1894, in its application to the Province of Bombay.

Whereas it is expedient to amend the Land Acquisition Act, 1894, in its application to the Province of Bombay for the purpose hereinafter appearing.

It is hereby enacted as follows :—

1. **Short title, extent and commencement**:—(1) This Act may be called the Land Acquisition (Bombay Amendment) Act, 1948.

- (2) It extends to the whole of Province of Bombay.
- (3) It shall come into force at once.
- (4) It shall remain in force for a period of five years only.

2. **DEFINITIONS**—In this Act unless there is any thing repugnant in the subject or context,—

- (i) “housing scheme” means any housing scheme which the Government may from time to time undertake for the purpose of increasing accommodation for housing persons and shall include such scheme undertaken from time to time with previous sanction of the Provincial Government by a local authority or company :
“Relevant date” means the 1st day of January 1948.

3. **Amendment of Sections 3, 11 and 23 of Act I of 1894.**—(1) Where during the continuance of this Act, any land is acquired under the Land Acquisition Act, 1894 (hereinafter called “the said Act”) for the purpose of a housing scheme the said Act shall have effect in relation to such acquisition as if—

- (a) in clause (f) of Section 3 after the words “such provisions” the words and brackets “and a housing scheme as defined in the Land Acquisition (Bombay Amendment) Act 1948” had been inserted :
- (b) in Section 11 after the words, figures and brackets “Section 4 sub-section (1)” the words “and at the relevant date,” had been inserted : and
- (c) in Section 23—
- (i) in the first clause of sub-section (1), after the words, brackets and figures “Section 4. sub-section (1)” the words “or at the relevant date, whichever is less” had been inserted, and
- (ii) Sub-section (2) had been omitted.
- (2) Nothing in this section shall apply to any building :

Notes

It was held in *Asst. Collector, Thana Prant Thana vs. Jamnadas Gokaldas Patil* (a) that discrimination is writ large and that the payment of compensation on the basis of 1st. Jan. 1948 irrespective of date of notification is unreasonable, but the Act is protected from being declared void by virtue of Art. 31-A of the Constitution being an ‘existing’ law. But this view was overruled in *Jeejeebhoy vs. Asst. Collector Thana Prant* (b) which held that the Bombay Land Acquisition (Amendment) Act IV of 1948 being void *ab initio* is not saved by Art. 31-A, and so *ultra vires* the Constitution.

(a) *Asst. Collector, Thana Prant Thana v. Jamnadas Gokaldas Patil*, A. I. R. 1960 Bom. 35.

(b) *Jeejeebhoy v. Asst. Collector, Thana Prant*, A. I. R., 1965 S. C. 1096.

Bombay (5)

The Land Acquisition (Bombay Amendment) Act, 1960

(Bombay Act No. XVII of 1960)

(State Amendments)

(The Land Acquisition (Bombay Amendment) Act, 1960 has been repealed by the Gujarat Act No. 1 of 1966. Vide Chapter under heading Gujarat. The Supreme Court held that this Act is *ultra vires* for violating Article 14 of the Constitution.)

1. Short Title, extent and commencement.—(1) This Act may be called the Land Acquisition (Bombay Amendment) Act, 1960.

(2) It extends to the whole of the State of Bombay.

(3) It shall come into force at once.

2. Amendment of Sections 11, 23 and 24 of Act I of 1894.—(1) Where any land is acquired for the following public purpose, namely, of setting up a township for a new capital of a State Government or for developing a headquarters of a State Government, then the Land Acquisition Act, 1894 (I of 1894), as in force in the State of Bombay shall have application as if—

(a) in Section 11, after the words, figures and brackets “Section 4, sub-section (1)” the words and figures “and at the first day of July 1959” had been inserted ; and

(b) for Section 23 the following had been substituted, namely,—

“**23. Matters To Be considered In determining compensation:**—In determining the amount of compensation to be awarded for the land or any interest therein acquired under this Act, the Court shall take into consideration the following :

(1) the market-value at the date of the publication of the notification under section 4 sub-section (1) or at the first day of July 1959, whichever is less :

(2) the use to which the land was put at the date of such notification :

(3) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time when the possession was taken from him :

(4) the damage (if any) sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time when the possession was taken from him, by reason of severing such land from his other land :

(5) the damage (if any) sustained by the person interested at the time of the possession being taken from him of the land by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner or his earnings :

(6) if in consequence of the acquisition of the land the person interested is compelled to change his residence, or place of business, the reasonable expenses, if any, incidental to such change.

(c) for Section 24, the following had been substituted, namely,—

“24. *Matters to be neglected in determining compensation.*—The Court shall not take into consideration the following :—

- (1) the degree of urgency which had led to the acquisition :
- (2) any disinclination of the person interested to part with the land acquired :
- (3) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit :
- (4) any damage which is likely to be caused to the land acquired, after the date of the publication of the notification under section 4, sub-section (1) by or in consequence of the use to which it will be put :
- (5) any increase to the value of land acquired likely to accrue from the use to which it will be put when acquired :
- (6) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put :
- (7) any outlay or improvement on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector or after the date of the publication of the notification under Section 4, sub-section (1) ;
- (8) the special suitability or adaptability of the land for any purpose, if that purpose is a purpose to which it could be applied in pursuance of any law, or for which there is no market apart from the special need of the State Government ;
- (9) any increase in the value of land by reason of the use thereof any premises thereon in a manner which could be restrained by any Court, or is contrary to law or is detrimental to the health of the inmates of the premises or to the public health.”

2. Nothing in sub-section (1) shall apply to any building.

3. **Removal of doubt.**—For the removal of doubt it is hereby expressly declared that nothing in this Act shall affect the provisions of the Land Acquisition (Bombay Amendment) Act, 1948 (Bombay IV of 1948).

4. **Repeal of Bombay Ordinance No. I of 1960.**—The Land Acquisition (Bombay Amendment) Ordinance, 1960 (Bom. Ord. No. I of 1960), is hereby repealed and the provisions of Sections 7 and 25 of the Bombay General Clauses Act, 1904 (Bombay I of 1904), shall apply to such repeal as if that Ordinance were an enactment.

Bombay (6)

Land Acquisition (Bombay Amendment) Act II of 1950.

Land Acquisition (Bombay Amendment) Act II of 1950 for amending the Amendment Act IV of 1948 which is no longer of any importance.

Notes.—The amendment provided in Act II of 1950 are already incorporated in Act XXXIII of 1948.

Bombay (7)**BOMBAY MUNICIPAL BOROUGHS ACT (XVIII OF 1925)**

52. Recourse to the Land Acquisition Act, 1894.—When there is any hindrance to the permanent or temporary acquisition by a municipality upon payment of any land or building required for the purposes of this Act, the Provincial Government may, after obtaining possession of the same for itself under the Land Acquisition Act, 1894, or other existing law, vest such land or building in the Municipality on its paying the compensation awarded, and on its repaying to the Provincial Government all costs incurred by the Provincial Government on account of the acquisition. *Ambalal v. Ahmedabad Municipal Corporation, (a)*

* * *

Bombay (8)**BOMBAY PROVINCIAL MUNICIPAL CORPORATION ACT, 1949**

* * *

CHAPTER VIII**Municipal Property***Acquisition of Property*

76. Powers of Corporation as to acquisition of property.—(1) The Corporation shall, for the purposes of this Act, have power to acquire and hold movable and immovable property or any interest therein whether within or without the limits of the City.

(2) All immovable and other property, wherever situate, which on the date immediately preceding the appointed day vested—

- (a) in any municipality or local authority which has been superseded by or under this Act in consequence of the inclusion in the City of the area for which it was constituted, or
- (b) in His Majesty by reason of the supersession or dissolution of such municipality or local authority under any law relating to such municipality or local authority,

shall upon and after the said day vest in and be held by the Corporation having jurisdiction in such City as trustees for the purposes of this Act but subject to all trusts, charges and liabilities affecting the same.

(3) All primary schools, with their lands, buildings, records and equipment, and all other properties, movable or immovable, which on the date immediately preceding the appointed day vested, under the provisions of Sec. 12 of the Bombay Primary Education Act, 1947, in the District School Board of the district in which such City is situate in respect of any area which is included in such City shall, upon and after the said day,

(a) *Ambalal v. Ahmedabad Municipal Corporation*, A. I. R. 1968, S. C. 1223.

vest in, and be held by, the Corporation as trustees for the purposes of this Act, but subject to all trusts, charges and liabilities affecting the same:

Provided that in the event of any question, dispute or doubt arising as to whether any particular property shall so vest in and be held by the Corporation, the matter shall be referred to the Provincial Government whose decision thereon shall be final.

(4) The Provincial Government may, by order in writing, direct that any immovable or other property situate in or pertaining to an area, included within the limits of any City which, on the appointed day, was vested in a local authority whose jurisdiction extended beyond such area shall vest in and be held by the Corporation as trustees for the purposes of this Act, but subject to all trusts, charges and liabilities affecting the same.

(5) Any immovable property which may be transferred to the Corporation by the Government shall be held by it subject to such conditions, including resumption by the Government on the occurrence of a specified contingency, and shall be applied to such purposes as the Government may impose or specify when the transfer is made.

77. Acquisition of immovable property.—(1) Whenever it is provided by this Act that the Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms and at such rates or prices or at rates or prices not exceeding such maxima as shall be approved by the Standing Committee either generally for any class of cases or specially in any particular case.

(2) Whenever, under any provision of this Act, the Commissioner is authorized to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do so on such terms and at such rates or prices or rates or prices not exceeding such maxima as shall be approved by the Standing Committee as aforesaid.

(3) The Commissioner may on behalf of the Corporation acquire by agreement any easement affecting any immovable property vested in the Corporation, and the provisions of sub-secs. (1) and (2) shall apply to such acquisition.

78. Procedure when immovable property cannot be acquired by agreement.—(1) Whenever the Commissioner is unable under Sec. 77 to acquire by agreement any immovable property or any easement affecting any immovable property vested in the Corporation or whenever any immovable property or any easement affecting any immovable property vested in Corporation is required for the purposes of this Act, the Provincial Government may, in its discretion, upon the application of the Commissioner, made with the approval of the Standing Committee and subject to other provisions of this Act, order proceedings to be taken for acquiring the same on behalf of the Corporation, as if such property or easement were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

(2) Whenever an application is made under sub-sec. (1) for the acquisition of land for the purpose of providing a new street or for widening or improving an existing street, it shall be lawful for the Commissioner to apply for the acquisition of such additional land immediately adjoining the land to be occupied by such new street or existing street as is required for the sites of buildings to be erected on either side of the street, and such additional land shall be deemed to be required for the purposes of this Act.

(3) The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the Corporation.

* * *

282. Extent to which Land Acquisition Act shall apply to acquisition of land otherwise than by agreement.—The Land Acquisition Act, 1894, hereinafter referred to as “the Land Acquisition Act” shall, to the extent set forth in Appendix I regulate and apply to the acquisition of land under this Chapter, otherwise than by agreement, and shall for that purpose be deemed to form part of this Chapter in the same manner as if enacted in the body hereof, subject to the provisions of this Chapter and the provisions following, namely :

(1) a reference to any section of the Land Acquisition Act shall be deemed to be a reference to such section, as modified by the provisions of this Chapter, and the expression “land” as used in the Land Acquisition Act shall be deemed to have the meaning assigned to it by clause (30) of Sec. 2 of this Act. and clause (b) of Sec. 3 of the Land Acquisition Act shall, for the purposes of this Chapter, be read as if the words and parentheses “(including the Crown),” were inserted after the words “includes all persons”, and the words “or if he is the owner of any right created by legislative enactment over any street forming part of the land” were added after the words “affecting the land” :

(2) in the construction of sub-sec. (2) of Sec. 4 of the Land Acquisition Act and the provisions of this Chapter the provisions of the said subsection shall, for the purposes of this Act, be applicable immediately upon the passing of a resolution under sub-sec. (1) of Sec. 270 and the expression “Provincial Government” shall be deemed to include the Commissioner, and the words “such locality” shall be deemed to mean the locality referred to in any such resolution ;

(3) in the construction of the sections of the Land Acquisition Act deemed to form part of this Chapter and of the provisions of this Chapter, the publication of a notification under sub-sec. (1) of Sec. 270 shall be deemed to be the publication of a notification under sub-sec. (1) of Sec. 4 of the Land Acquisition Act and the date of publication of the declaration under Sec. 278 shall be deemed to be the date of the publication of the declaration under Sec. 6 of the Land Acquisition Act :

Provided that where land is acquired under Sec. 273 or sub-sec. (3) of Sec. 274, the date of publication of the notification under sub-sec (2) of

Sec. 272 shall be deemed to be the date of publication of a declaration under Sec. 6 of the Land Acquisition Act :

(4) in the construction of sub-sec. (2) of Sec. 52 of the Land Acquisition Act and the provisions of this Chapter, the Commissioner shall be deemed to be the local authority or company concerned :

(5) notwithstanding anything contained in sub-sec. (1) of Sec. 49 of the Land Acquisition Act, it shall not be competent for the owner of any building of which it is proposed to acquire only a part, to insist on the acquisition of his entire holding where the part proposed to be acquired can, in the opinion of the Collector, be severed from the remainder without material detriment thereto :

Provided that the Collector shall, if required by the owner of such building, refer the question whether such part can be severed from the remainder without material detriment for the determination of the Court and the Court shall decide upon such a reference, as if it were a reference to the Court under the said sub-section :

Provided also that if, in the opinion of the Collector or, in the event of a reference, of the Court, the part proposed to be acquired cannot be severed from the remainder without material detriment thereto, the Provincial Government may, at the instance of the Commissioner, order the acquisition of the remainder, and in such case no fresh declaration shall be necessary, but the Collector shall without delay furnish a copy of the order of the Provincial Government to the person or persons interested and shall thereafter take order for the acquisition of remainder in like manner and with like powers in all respects as if the acquisition had originally been provided for in the improvement scheme.

283. Special provisions as to compensation.—In determining amount of compensation to be awarded for any land or building acquired for the purposes of this Act, the following further provisions shall apply :

(1) the Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building :

(2) when any addition to, or improvement of, the land or building has been made after the date of the publication under sub-sec. (2) of Sec. 272 of notification relating to the land or building, such addition or improvement shall not (unless it was necessary for the maintenance of the building in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made, so as to increase the amount of the compensation to be paid for the land or building :

(3) in estimating the market value of the land or building at the date of the publication of a notification relating thereto under sub-sec. (2) of Sec. 272, the Court shall have due regard to the nature and the condition of the property and the probable duration of the building, if any, in its existing state and to the state of repair thereof and to the provisions of clauses (4), (5) and (6) of this section :

(4) if in the opinion of the Court, the rental of the land or building has been enhanced by reason of its being used for an illegal purpose, or being so overcrowded as to be dangerous or injurious to the health of the inmates, the rental shall not be deemed to be greater than the rental which would be obtainable if the land or building were used for legal purposes only, or were occupied by such a number of persons only as it was suitable to accommodate without risk of such overcrowding :

Explanation.—For the purposes of this sub-section, overcrowding shall be interpreted as in Sec. 307.

(5) if in the opinion of the Court the building is in a state of defective sanitation, or is not in reasonably good repair, the amount of compensation shall not exceed the estimated value of the property after the building has been put into a sanitary condition, or into reasonably good repair, less the estimated expense of putting it into such condition or repair :

(6) if in the opinion of the Court the building being used or intended or likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation for the building shall not exceed the value of the materials, less the cost of the demolition :

(7) compensation may be awarded if the Court thinks fit in respect of the severance of any part of a building proposed to be acquired in addition to the value of such part.

284. Collector to take possession after making an award and transfer land to Corporation.—When the Collector has made an award under Sec. 11 of the Land Acquisition Act, as applied by this Act, he may take possession of the land which shall thereupon vest absolutely in the Crown free from all encumbrances, and the Collector shall, upon payment of the cost of the acquisition, make over charge of the land to the Commissioner and the land shall thereupon vest in the Corporation subject to the liability of the Commissioner to pay on behalf of the Corporation any further costs which may be incurred on account of the acquisition of the land.

* * *

Acquisition and Disposal of Property

344. Acquisition of immovable property.—(1) Whenever it is necessary or expedient for the purposes of the Transport Undertaking that the Transport Manager shall acquire any immovable property, such property may be acquired by the Transport Manager on behalf of the Corporation by agreement on such terms and at such rates or prices or at rates or prices not exceeding such maximum as shall be approved by the Transport Committee either generally for any class of cases or specially in any particular case.

(2) Whenever the Transport Manager is unable to acquire any immovable property under sub-sec. (1) by agreement, the Provincial Government, in its discretion, upon the application of the Transport Manager made with the approval of the Transport Committee and, subject to the other provisions of this Act, order proceedings to be taken for acquiring the same on

behalf of the Corporation as if such property were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

(3) The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall, subject to the other provisions of this Act, be forthwith paid by the Transport Manager and thereupon the said property shall vest in the Corporation for the purposes of the Transport Undertaking.

APPENDIX I

(See Section 282)

Provisions of the Land Acquisition Act 1894, Regulating the Acquisition of Land for Improvement Purposes

Part I—Preliminary, except clauses (e) and (f) of Sec. 3.

Part II—Acquisition, except sub-sec. (1) of Sec. 4, Sec. 6 and sub-sec. (2) of Sec. 17.

Part III—Reference to Court and Procedure thereon, except sub-sec. (2) of Sec. 23 and clauses (6) and (7) of Sec. 24.

Part IV—Apportionment of compensation.

Part V—Payment.

Part VI—Temporary occupation of land.

Part VII—Miscellaneous.

Bombay (9)

*The City of Bombay Municipal Act (III of 1888)

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87. **Powers of Corporation as to acquisition of property.**—The Corporation shall, for the purpose of this Act, have power to acquire and hold movable and immovable property, whether within or without the limits of the city.
* * *

*For Statement of Objects and Reasons, see. *Bombay Government Gazette*, 1887, Part V., P. 188, for Report of the Select Committee, see *ibid.*, 1888, p. 1., and for Proceedings in Council, see *ibid.*, 1887, p. 222 and *ibid.*, 1888, pp. 177, 203, 228, 259, 286, 311 and 321.

Bom. 3 of 1888 has, so far as regards the jurisdiction, decisions, orders and other proceedings of Appellate Benches of Municipal Authorities, Presidency and other Magistrates, Courts of Small Causes and Judges of such Courts, been declared to be as valid as if it had been passed by the Governor-General of India in Council—see Act 12 of 1888, S. 1.

The Bombay Municipal Servants Act is to be read with Bom. 3 of 1886—see Bom. 5 of 1890, S. 2 (2).

The City of Bombay Police Charges Act, 1907 Bom. 3 of 1907, is to be read with Bom. 3 of 1888. Only those amendments which it makes in the latter and which have been declared to come into force on 1st April, 1907, have been here incorporated; for the other amendments which have been declared (see Ss. 39, 40 and 62) to come into force when notified by the Governor in Council, see Bom. 3 of 1907.

90. Acquisition of immovable property by agreement.—(1) Whenever it is provided by this Act that the Commissioner may acquire or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms and at such rates or prices or at rates or prices not exceeding such maxima as shall be approved by the ¹[Improvements Committee], either generally for any class of cases or specially in any particular case.

(2) And whenever, under any provision of this Act, the Commissioner is authorised to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do so on such terms and at such rates or prices or at rates or prices not exceeding such maximum as shall be approved by the ²[Improvements Committee] as aforesaid.

³(2-A) Subject to the provisions of this Act, it shall be lawful for the Commissioner on behalf of the Corporation to agree, with the owner of any land or of any interest in land needed by the Corporation for the purposes of any scheme under Chapter XII-A or with the owner of any right which may have been created by legislative enactment over any street forming part of the land so needed, for the purchase of such land or of any interest in such land or for compensating the owner of any such right in respect of any deprivation thereof or interference therewith.

⁴(3) No contract for the acquisition of any immovable property or of any interest therein or any right thereto or the payment of any compensation under sub-sec. (1) or 2 or (2-A) shall be valid, if the price or compensation to be paid for such property or interest or right exceeds five thousand rupees unless and until such contract has been approved by the Improvements Committee and by the Corporation if the price or compensation exceeds ten thousand rupees.

⁵(4) Every contract or other instrument relating to the acquisition of immovable property or any interest therein or any right thereto shall be executed by the Commissioner, shall have the common seal of the Corporation affixed thereto in the presence of two members of the Improvement Committee and shall also have the signatures of the said two members, in the manner prescribed in Sec. 70.

⁶(5) No contract for the acquisition of immovable property or any interest therein or any right thereto not executed as provided in sub-sec. (4) shall be binding on the Corporation.

⁷(6) The foregoing provisions of this section which apply to an original contract relating to the acquisition of immovable property, or any interest

¹ The words 'Improvements Committee' were substituted for the original words by Bom. 13 of 1933, S. 17 (a).

² The words 'Improvements Committee' were substituted for the original words, *ibid.*, S. 17 (b).

³ New sub-sec. (2-A) was inserted by Bom. 13 of 1933, of S. 17 (c).

⁴ Sub-sec. (3) was substituted for the original sub-section, *ibid.*, S. 17 (d).

⁵ New Sub-Ss. (4), (5) and (6) were inserted, *ibid.*, S. 17 (e).

⁶ *Ibid.*

⁷ *Ibid.*

therein, or any right thereto, shall be deemed to apply also to any variation or discharge of such contract.

Notes—The Corporation can under the Act acquire more land than is necessary for the actual construction of the new road in order that, by the resale of the surplus land they may recoup themselves for the expenses of construction and widening. (a). The Corporation can acquire for additional frontages whenever it seemed expedient for them to do so, the only restriction of such powers being that the decision regarding expediency must be arrived at honestly and on reasonable grounds.

91. Procedure when immovable property cannot be acquired by agreement.—(1) Whenever the Commissioner is unable to acquire any immovable property under the last preceding section by agreement, ¹[the Provincial Government] may, in their discretion, upon the application of the Commissioner, made with the approval of the ²[Improvement Committee] ³[and subject to the other provisions of this Act] order proceedings to be taken for acquiring the same on behalf of the Corporation, as if such property were land needed for a public purpose within the meaning of the Land Acquisition Act, 1870.⁴

(2) The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the Corporation.

* * * * *

296. Power to acquire premises for improvement of public streets.—

(1) The Commissioner may, subject to the provisions of Secs. 90, 91 and 92—

- (a) acquire any land required for the purpose of opening, widening, extending, or otherwise improving any public street or of making any new public street, and the buildings, if any standing upon such land ;
- (b) acquire in addition to the said land and the buildings, if any, standing thereupon, all such land with the buildings, if any, standing thereupon, as it shall seem expedient for the Corporation to acquire outside of the regular line, or of the intended regular line, of such street ;
- (c) lease, sell or otherwise dispose of any land or building purchased under clause (b).

(2) Any conveyance of land or of a building under clause (c) may comprise such conditions as the Commissioner thinks fit, as to the removal of the existing building, the description of new building to be

(a) *Vandarao Vithoba Kore v. The Municipal Corporation of Bombay* 23 Bom. L. R. 381 : 63 I. C. 581.

¹ The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

² These words were substituted for the original words by Bom. 13 of 1933, S. 18 (a) .

³ These words were inserted, *ibid*, S. 18 (b).

⁴ See now the Land Acquisition Act, 1894 (I of 1894).

erected, the period within which such new building shall be completed and other such matters.

Acquisition and disposal of property

460-O. Acquisition of immovable property by agreement.—(1) Whenever it is necessary or expedient for the purposes of the Bombay Electric Supply and Transport Undertaking that the General Manager shall acquire any immovable property, such property, may be acquired by the General Manager on behalf of the Corporation by agreement on such terms and at such rates or prices or at rates or prices not exceeding such maxima as shall be approved by the Bombay Electric Supply and Transport Committee either generally for any class of cases or specially in any particular case.

(2) No contract for the acquisition of any immovable property shall be valid, if the price to be paid for such property exceeds five thousand rupees unless and until such contract has been approved by the Bombay Electric Supply and Transport Committee and, if price exceeds ten thousand rupees, by the Corporation.

460-P. Procedure when immovable property cannot be acquired by agreement.—(1) Whenever the General Manager is unable to acquire any immovable property under Sec. 460-O by agreement, the Provincial Government may, in its discretion, upon the application of the General Manager made with the approval of the Bombay Electric Supply and Transport Committee and, subject to the other provisions of this Act, order proceedings to be taken for acquiring the same on behalf of the Corporation as if such property were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

(2) The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall, subject to the other provisions of this Act, be forthwith paid by the General Manager and thereupon the said property shall vest in the Corporation for the purposes of the Bombay Electric Supply and Transport Undertaking.

460-Q. Provisions governing disposal of municipal property.—With respect to the disposal of property vesting in the Corporation for the purposes of the Bombay Electric Supply and Transport Undertaking, the following provision shall have effect, namely :

- (a) the General Manager may dispose of by sale, hire, hire-purchase or otherwise, any movable property belonging to the Corporation not exceeding in value, in each instance, two thousand rupees ;
- (b) the General Manager may grant a lease of an immovable property belonging to the Corporation for any period not exceeding twelve months at a time :

Provided that every lease granted by the General Manager (other than a contract for a monthly-tenancy) the annual rent whereof at a rack rent exceeds three thousand rupees shall be reported by him, within fifteen days after the same has

been granted, to the Bombay Electric Supply and Transport Committee ;

- (c) with the sanction of the Bombay Electric Supply and Transport Committee, the General Manager may dispose of, by sale or otherwise, any movable property belonging to the Corporation of which the value does not exceed ten thousand rupees, and may grant a lease of any immovable property belonging to the Corporation for any period exceeding one year, or sell or grant a lease in perpetuity of any immovable property the value whereof does not exceed fifty thousand rupees or the annual rental whereof does not exceed three thousand rupees ;
- (d) with the sanction of the Corporation, the General Manager may lease, sell or otherwise convey any property, movable or immovable, belonging to the Corporation.

Bombay (10)

The City of Bombay Improvement Act, IV of 1898.

Sections 46—50.

46. *Acquisition of Land*—Subject to the provisions of this Act it shall be lawful for the Board to agree with the owner of any land or of any interest in land needed by the Board for the purposes of this Act or with the owners of any rights, which have been created by legislative enactment over any street forming part of the land so needed for the purchase of such land or of any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith.

47. (1) Notwithstanding anything contained in the Land Acquisition Act, 1894 (in this and the next succeeding section referred to as the said Act), the said Act shall not, except to the extent set forth in Schedule A, apply to the acquisition of land under this Act, but the said Act shall, to the extent set forth in the said schedule, regulate and apply to the acquisition of land otherwise than by agreement and shall for that purpose be deemed to form part of this Chapter in the same manner as if enacted in the body hereof, subject to the provisions of this Chapter and to the following provisions namely :—

- (a) A reference to any section of the said Act shall be deemed to be a reference to such section as modified by the provisions of this Chapter, and the expression land is used in said Act shall, in addition to the meaning included therein under clause (a) of Section 3 of the said Act, be deemed for the purposes of this Act to include rights created by legislative enactments over any street, and clause (b) of Section 3 of the said Act shall for the purposes of this Act be read as if the words and parentheses (“including the Crown”) there inserted after the words “included all persons” and the words “or if he is the owner of

any right created by legislative enactments over any street forming part of the land" were added after the words "affecting the land".

(2) In the construction of sub-section (2) of Section 4 of the said Act and the provisions of this Chapter, the provisions of the said sub-section shall for the purposes of this Act be applicable immediately upon the passing of a resolution under Sections 23, 30, 32-B, or 38, and the expression "Local Government" shall be deemed to include the Board, and the words "such locality," shall be deemed to mean "the locality referred to in any such resolution".

(3) In the construction of the section of the said Act deemed to form part of this Chapter, publication of a declaration under sections 29, 32, 32-B or 39 shall be deemed to be the publication of a declaration under section 6 of the said Act :

Provided that the land is acquired under Section 27-A or sub-section (2) of Section 27-B, the date of the Notification under Section 27 or the date of receipt by the Board of the written notice as the case may be shall be deemed to be the date of publication of declaration under Section 6 of the said Act :

Provided further that the provisions of sub-section (2) of Section 23 of the said Act shall apply when land, other than land forming part of any sanctioned scheme prepared in accordance with the provisions of Secs. 23 and 30 is acquired specifically under this Act for the purpose either of a Police Accommodation Scheme or of a Poorer Classes Accommodation Scheme.

(4) In the construction of Section 50, sub-section (2), of the said Act and the provisions of this Chapter the Board shall be deemed to be the Local Authority or company concerned.

48. (1) For the purposes of this Chapter a Tribunal of Appeal hereinafter called the Tribunal shall be constituted as hereinafter mentioned to perform the functions of the Court under the said Act, and, in the construction of the said Act and the provisions of this Chapter, the Tribunal shall be deemed to be the Court, and the award of the Tribunal, or, in the event of disagreement, the award of the majority of the Tribunal, shall be deemed to be award of the Court, and shall, subject to the provisions for appeal hereinafter contained, be final. The President of the Tribunal shall be deemed to be the Judge.

(2) The decision of all questions of law and procedure and costs and apportionment of compensation shall rest solely with the President, and any such question may be tried and decided in the absence of the Assessors if in the opinion of the President their presence is unnecessary and when any such question is so tried and decided the decision of the President shall be deemed to be the decision of the Tribunal.

(3) Such Tribunal shall consist of 3 members, that is to say, a President and two Assessors. The President and one of the Assessors shall be appointed by Government by notification in the Bombay Government Gazette ; the other Assessor shall be appointed by the Corporation. Provided that any person who is a Trustee under this Act, or who, by

reason of the provision of section 14, is disqualified to be a Trustee, shall be disqualified to be Member of the Tribunal.

(4) The President shall be either—

(a) A member of the Judicial branch of the Imperial or Provincial Civil Service of not less than 10 years' standing, who shall have served as District Judge or held Judicial Office not inferior to that of a First Class Subordinate Judge for at least three years of that period ; or

(b) A Barrister, Advocate or Pleader of not less than 8 years' standing who has practised as an Advocate or Pleader in the Bombay High Court.

(5) Members of the Tribunal shall be appointed for a term of one year and any such member shall be eligible for re-appointment.

(6) It shall be lawful for government if they think fit to remove for inability or misbehaviour, or other good and sufficient cause, any Member of the Tribunal.

(7) Upon the occurrence of any vacancy in the Tribunal or during the temporary absence through illness or other unavoidable cause of any Member thereof, Government or the Corporation (as the case may be), whichever of them shall have appointed the member of the Tribunal whose place shall be vacated shall appoint forthwith a fit person to be a Member (either temporary or permanent) of the Tribunal in lieu of the Member whose place is vacated or who is temporarily absent as aforesaid.

(8) Each member of the Tribunal shall be entitled to such remuneration, either by way of monthly salary or by way of fees, or partly in one way and partly in the other, as Government may from time to time fix.

(9) The remuneration mentioned in sub-section 8 and the cost of any special clerical or other establishment which shall be necessary shall be paid by the Board.

(10) Any award or order of the Tribunal shall be enforced by the Small Cause Court as if it had been a Decree or Order of the Court.

(11) In any case in which the President may grant a certificate that the case is a fit one for appeal there shall be an appeal to the High Court from the award or any part of the award of the Tribunal.

(12) Subject to the sanction of Government, the President of the Tribunal shall have power—

(a) to appoint such clerks and other officers or servants, as the case may be, necessary for carrying on the business of the Tribunal and to fix their salaries, which shall be paid accordingly by the Board ; and

(b) to make rules for the conduct of the business of the Tribunal provided that the rules are not repugnant to the provisions of the Code of Civil Procedure and such rule shall come into force on receiving the sanction of Government.

(13) The Tribunal shall have power to summon and enforced the attendance of witness including parties interested or any of them and

to compel the production of documents by the same means (so far as may be in the same manner), as is provided in Code of Civil Procedure.

49. In determining the amount of compensation to be awarded for any land or building acquired under this Act, the following further provisions shall apply :—

(1) The Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue, from the acquisition of the land or from the acquisition, alteration or demolition of the building.

(2) When any addition to or improvement of the land or building has been made after the date of the publication under Sections 27, 32 or 39 of a notification relating to the land or building, such addition or improvement shall not (unless it was necessary for the maintenance of the building in a proper state of repairs) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the land or building.

(3) In estimating the market value of the building at the date of the publication of the declaration relating thereto under Sections 29, 30 or 39 the Court shall have due regard to the nature and the condition of the property and the probable duration of the building in its existing state and to the state of repair thereof and to the provisions of sub-sections (4), (5) and (6) of this section.

(4) When the owner of the land or building has, after the passing of this Act and within 24 months preceeding the date of the publication of a notification relating to the land or building under Sections 27, 32 or 39, made a return (Section 155 of the Municipal Act) of rent of the land or building the rent of the land or building shall not in any such case, save as the Court may otherwise direct, be deemed to be greater than the rents shown in the latest return so made : Provided that where any addition to or improvement of the land or building has been made after the date of such latest return and previous to the date of the publication of a notification under Section 27, 32 or 39, relating to the land or building, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement :

(5) If in the opinion of the Court the rental of the land or building has been enhanced by reason of its being used for an illegal purpose, or being over-crowded so as to be dangerous or injurious to the health of the inmates, the rental shall not be deemed to be greater than the rental which would be obtainable if the land or building were used for legal purposes only or were occupied by such a number of persons only, as it was suitable to accommodate without risk of such over-crowding.

(6) If in the opinion of the Court the building is in a state of defective sanitation, or is not in reasonably good repairs, the amount of compensation shall not exceed the estimated value of the building after being put into a sanitary condition or into reasonably good repairs, less the estimated expense of putting it into such condition of repairs.

(7) If in the opinion of the Court the building being used or intended or likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials, less the cost of demolition.

50. When the Collector has made an award, under Section 11 of the Land Acquisition Act I of 1894, as applied by this Chapter, he may take possession of the land, which shall thereupon vest absolutely in His Majesty free from all encumbrances, and the Collector shall, upon payment of the costs of the acquisition, make over charge of the land to the Board, and the land shall thereupon vest in the Board, subject to the Board's liability to pay any further costs which may be incurred on account of the acquisition of the land.

Bombay (11)

The Bombay District Municipal Act, III of 1901 (Bombay Council).

(As modified by Act III of 1920.)

Sections 41 & 160

41. *Compulsory Acquisition of Land.*—When there is any hindrance to the permanent or temporary acquisition, upon payment, of any land or building required for the purpose of this Act, the Governor-in-Council may, after obtaining possession of the same for Government under the Land Acquisition Act, 1894, or other existing law, vest such land or building in the Municipality on their paying the compensation awarded, and on their repaying to Government all costs incurred by Government on account of the acquisition.

160. (1) If a dispute arises with respect to any "compensation or damages," which are by this Act directed to be paid, the amount, and if necessary the apportionment of the same shall be ascertained and determined by a *Panchayat* of 5 persons, of whom two shall be appointed by the Municipality, two by the party to or from whom such "compensation or damages" may be payable or recoverable, and one, who shall be *Sarpanch*, shall be elected by the members already appointed as above.

(2) If either party or both parties fail to appoint members or if the members fail to select a *Sarpanch* within one month from the date of either party receiving written notice from the other of claim to such "compensation or damages," such members as may be necessary to constitute the *Panchayat* shall be appointed at the instance of either party, by the District Judge.

(3) In the event of the *Panchayat* not giving a decision within one month from the date of the selection of the *Sarpanch*, or of the appointment by the District Court of such members as may be necessary to constitute the *Panchayat* the matter shall, on application by either party, be determined by the District Court, which shall in cases in which the com-

compensation is claimed in respect of land, follow, as far as may be the procedure provided by the Land Acquisition Act, 1894, for the proceeding in matters referred for the determination of the Court ;

Provided that :—

- (a) no application to the Collector for a Reference shall be necessary ; and
- (b) the court shall have full power to give and apportion the cost of all proceedings in any manner it thinks fit.

Bombay (12)

The Bombay Town Planning Act, 1955 (27 of 1955).

11. *Acquisition of land.*—(1) The local authority may acquire any land designated in the development plan for a purpose specified in clause (b), (c), (d) or (e) of Section 7 either by agreement or under the Land Acquisition Act, 1894 (1 of 1894)

(2) If the land is acquired under the Land Acquisition Act, 1894 (1 of 1894) the provisions of the said Act as amended by the Schedule to this Act shall apply to the determination of compensation for the acquisition of such land.

(3) If the designated land is not acquired by agreement within ten years from the date specified under sub-section (3) of Section 10 or if proceedings under the Land Acquisition Act, 1894 (1 of 1894) are not commenced within such period, the owner or any person interested in the land may serve notice to the local authority and if within six months from the date of the service of such notice the land is not acquired or no steps as aforesaid are commenced for its acquisition, the designation shall be deemed to have lapsed.

Explanation—For the purposes of this section and Sections 81 and 84 and the Schedule, a reference to any provision of the Land Acquisition Act, 1894 (1 of 1894), if that Act is not in force in any part of the State, shall be construed as a reference to the relevant provision of the corresponding land in force in that part of the State. (Explanation added by Mah. Act 19 of 1965)

SCHEDULE

See Sections 11 and 84

Amendments to the Land Acquisition Act, 1894

1. *Amendment of Section 23 of Act 1 of 1894.*—For Section 23 of the Land Acquisition Act, 1894 (1 of 1894) (hereinafter called the said Act), following shall be substituted, namely :—

“23. *Matters to be considered in determining compensation.*—In determining the amount of compensation to be awarded for the land or any

interest therein acquired under this Act, the court shall take into consideration the following—

(1) the market value at the date of the publication of declaration under Section 6 ;

(2) the use to which the land was put at the date of such declaration ;

(3) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time when the possession was taken from him ;

(4) the damage (if any) sustained by the person interested at the time of the possession being taken from him by reason of serving such land from his other land ;

(5) the damage (if any) sustained by the person interested at the time of the possession being taken from him of the land by reason of the acquisition injuriously affecting his other property, movable, or immovable, in any other manner or his earnings ;

(6) if in consequence of the acquisition of the land the person interested is compelled to change his residence, or place of business, the reasonable expenses, if any, incidental, to such change.

2. *Amendment of Section 24 of Act 1 of 1894.*—For Section 24 of the said Act, the following shall be substituted, namely :—

“24. *Matters to be neglected in determining compensation.*—The Court shall not take into consideration the following :—

(1) the degree of urgency which has led to the acquisition ;

(2) any disinclination of the person interested to part with the land acquired ;

(3) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

(4) any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under Section 6, by or in consequence of the use to which it will be put :

(5) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

(6) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put.

(7) any outlay or improvements on, or disposal of the land acquired commenced, made or effected without the sanction of the local authority after the date of the publication of the notification under Section 6 ;

(8) the special suitability or adaptability of the land for any purpose, if that purpose is a purpose to which it could be applied in pursuance of any law, or for which there is no market apart from the special needs of the local authority ;

(9) any increase in the value of the land by reason of the use thereof or any premises thereon in a manner which could be restrained by any Court, is contrary to law or is detrimental to the health of the inmates of the premises or to the public health.

Notes

Whether the Act is ultra vires :—Having regard to the substantive and procedural aspects the Act imposes only reasonable restrictions and hence saved by Art. 19(5) of the Constitution. There is also no violation of Article 14. In the absence of any deprivation of Property, Art. 31 is not attracted, *Manicklal Chhotalal vs. M. G. Makwana & Ors (a)*.

Bombay (Maharashtra) (13)**THE LAND ACQUISITION ACT 1894 (Act No. I of 1894)***

(As applicable to Maharashtra State)

PART I**Preliminary**

1. Short title, extent and commencement.
2. (*Repealed*).
3. Definitions.
- 3-IA. Powers to be exercised by Commissioner by or under this Act.

PART I-A**Preliminary Survey**

- 3-A. Preliminary Survey of lands and powers of officers to carry out survey.
- 3-B. Payment for damage.

PART II**Acquisition****Preliminary investigation**

4. Publication of preliminary notification and powers of officers thereupon.
5. Payment for damage.

(a) *Manick Lal Chhotalal v. M. G. Makwana and Ors.*, 1968 (1), S. C. J. 379.

* For Statement of Objects and Reasons, see Gazette of India, 1892, Pt. v., p. 32.

Objections

5-A. Hearing of objections..

Declaration of intended acquisition.

6. Declaration that land is required for public purpose.
7. After declaration Collector to take order for acquisition.
8. Land to be marked out measured and planned.
9. Notice to persons interested.
10. Power to require and enforce the making of statements as to names and interests.

Enquiry into measurements, value and claims, and award by the Collector.—

11. Enquiry and award by Collector.
12. Award of Collector when to be final.
- 12-A. Amendment of award.
13. Adjournment of enquiry.
14. Power to summon and enforce attendance of witnesses and production of documents.
15. Matters to be considered and neglected.
- 15-A. Power to State Government to call for proceedings and pass order thereon.
16. Power to take possession.
17. Special powers in cases of urgency.

PART III

Reference to court and procedure thereon

18. Reference to Court.
19. Collector's statement to the Court.
20. Service of notice.
21. Restriction on scope of proceedings.
22. Proceedings to be in open Court.
23. Matters to be considered in determining compensation.
24. Matters to be neglected in determining compensation.
25. Rules as to amount of compensation.
26. Form of awards.
27. Costs.
28. Collector may be directed to pay interest on excess compensation.

PART IV

Apportionment of compensation

29. Particulars of apportionment to be specified.
30. Dispute as to apportionment.

PART V

Payment

31. Payment of compensation or deposit of same in Court.
32. Investment of money deposited in respect of land belonging to persons incompetent to alienate.
33. Investment of money deposited in other cases.
34. Payment of interest.

PART VI

Temporary occupation of land

35. Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.
36. Power to enter and take possession and compensation on restoration.
37. Difference as to condition of land.

PART VII

Acquisition of land for companies

38. Company may be authorised to enter and survey.
- 38-A. - Industrial concern to be deemed company for certain purposes.
39. Previous consent of appropriate Government and execution of agreement necessary.
40. Previous enquiry.
41. Agreement with appropriate Government.
42. Publication of agreement.
43. Sections 39 to 42 not to apply where Government bound by agreement.
44. How agreement with Railway Company may be proved.
- 44-A. Restriction on transfer etc.
- 44-B. Land not to be acquired under this Part except for certain purposes for private Companies, other than Government companies.

PART VIII

Miscellaneous

45. Service of notices.
46. Penalty for obstructing acquisition of land.
47. Magistrate to enforce surrender.
48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.

49. Acquisition of part of house or building.
50. Acquisition of land at cost of local authority or company.
51. Exemption from stamp duty and fees.
52. Notice in case of suit for anything done in pursuance of Act.
- 52-A. Delegation.
53. Code of Civil Procedure to apply to proceedings before Court.
54. Appeals in proceedings before Court.
55. Power to make rules.

Amendments

Amended by—

Act 9 of 1910, 4 of 1914, 10 of 1914, 17 of 1919, 38 of 1920, 19 of 1921, 38 of 1923, 16 of 1933, Govt. of India (Adaptation of Indian Laws) Order, 1937, Act I of 1938, the Indian Independence (Adaptation of Central Act and Ordinances) Order 1948, Adaptation of Laws Order 1950, and 1956, Act 31 of 1962, 13 of 1967, Bombay Act 18 of 1938, Bombay 20 of 1945, Bombay 4 of 1948, Bombay 35 of 1949, Bombay 27 of 1950, Bombay 35 of 1953, Bombay 8 of 1958, Bombay 12 of 1958, Maharashtra 38 of 1964, Maharashtra 24 of 1965, Maharashtra 14 of 1968.

2nd February, 1894)

An Act to amend the law for the acquisition of land for public purposes and for companies.

Whereas it is expedient to amend the law for the acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition. It is hereby enacted as follows :—

PART I

Preliminary

1. **Short title, extent and commencement :—**(1) This Act may be called the Land Acquisition Act, 1894 ;

(2) It extends to ¹[the whole of India except ²(the territories which immediately before the 1st November, 1956, were comprised in Part B States)] ³[other than the Hyderabad area of the State of Maharashtra] ; and

(3) It shall come into force on the 1st day of March, 1894, ⁴[but in the Hyderabad area of the State of Maharashtra it shall come into force on such day as is appointed under sub-section (3) of section 1 of the Land Acquisition (Maharashtra Extension and Amendment) Act, 1964 (Maharashtra Act XXXVIII of 1964)].

2. (Repeal).

(Same as in Central Act).

¹ Substituted by Adaptation of Laws Order 1950.

² Substituted by Adaptation of Laws Order 1956.

³ Inserted by Maharashtra Act 38 of 1964. S. 2 (a) (i).

⁴ Added by Mah. Act 38 of 1964 S. 2 (a) (ii).

3. Definitions :—In this Act, unless, there is something repugnant in the subject or context,—

(a) (same as in Central Act).

⁵[(aa) the expression “arable land” means land fit for cultivation whether in fact cultivated or not, and includes garden land ;]

(b) (same as in Central Act).

(c) The expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government ⁶[or by the Commissioner] to perform the functions of a Collector under this Act ;

(d) ⁷[the expression “Court” (except in sub-section (3) of section 18) means] a principal Civil Court of Original Jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act, ⁸[and shall in relation to any proceedings under this Act, include the Court of a Civil Judge (Senior Division) to which principal Civil Courts may transfer any such proceedings ;]

(e) (same as in Central Act),

(ee) -do-

(f) the expression “public purpose” includes—

⁹[(1) the provision of village sites in districts in which the appropriate Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision, ¹⁰[and

(2) the acquisition of land for purposes or the development of areas from public revenue or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale ; with the object of securing further development ;]

(g) (same as in Central Act).

¹¹[3-1-A. Powers to be Exercised by Commissioner by or under this Act :—The powers conferred on the Commissioner by or under this Act, shall be the powers exercisable by him in relation to the acquisition of land for those purposes only for which the State Government is the appropriate Government.]

⁵ This clause was deemed always to have been substituted by Mah, 24 of 1965. S. 2.

⁶ Inserted by Bom. Act 8 of 1958, Sch.

⁷ Substituted by Mah. 28 of 1964. S. 3 (a).

⁸ Added by Bom. 35 of 1953. S. 2 (i).

⁹ Inserted by Bom. 35 of 1953, S. 2. (2)(i).

¹⁰ Inserted by Bom. 35 of 1953, S. 2 (2) (2).

¹¹ Added by Bom. Act. 8 of 1958 Sch.

¹²[PART 1-A

Preliminary Survey

3-A. Preliminary Survey of Lands and Powers of Officers to carry out survey :—For the purpose of enabling the State Government or ¹³(the Commissioner) to determine whether land in any locality is needed by or is likely to be needed for any public purpose, it shall be lawful for any Officer of the State Government in the Public Works Department or any other officer either generally or, specially authorised by the State Government in this behalf ¹⁴[or as the case may be, any officer authorised by the Commissioner] and for his servants and workmen,—

- (i) to enter upon and survey and take levels of any lands in such locality,
- (ii) to mark such levels,
- (iii) to do all other acts necessary to ascertain whether the land is adapted for such purpose, and
- (iv) Where otherwise the survey can not be completed and the levels taken, to cut down and clear away any part of any standing crop, fence or jungle ;

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

3-B. Payment for damages :—The officer of the State Government in the Public Works Department and any other officer so authorised, shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, shall at once refer the dispute to the decision of the collector or other Chief Revenue Officer of the district, and such decision shall be final.]

PART II

Acquisition

Preliminary Investigation

4. Publication of preliminary notification and powers of officers thereupon.—¹⁵(same as in Central Act excepting that words “or the commissioner” are added after words “appropriate Government”).

5. Payment of Damages.—(same as in Central Act).

¹² This part was inserted by Bom. 20 of 1935. S. 2.

¹³ Inserted by Bom. 8 of 1958.

¹⁴ Inserted by Bom. 8 1958 Sch.

¹⁵ Inserted by Bom. 8 of 1958 Sch.

5-A. Hearing of objections.—¹⁶(same as in Central Act excepting that the words “or as the case may be of the Commissioner” are added after words “appropriate Government”).

Declaration of intended acquisition

6. Declaration that Land is required for a public purpose :—(1) Subject to the provision of Part VII of this Act, when the appropriate Government ¹⁶[or, as the case may be, the Commissioner] is satisfied, after considering the report, if any, made under section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a secretary to such Government or of some officer duly authorised to certify its order ¹⁶[or, as the case may be, under the signature of the Commissioner], ¹⁷[and different declarations may be made from time to time in respect of different parcels of any land covered by same notification under section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A sub-section (2)] :

¹⁸[Provided that no declaration of any particular land covered by a notification under section 4, sub-section (1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967 (1 of 1967) shall be made after the expiry of three years from the date of such publication ; Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

¹⁹[*Explanation.*—Where compensation to be awarded for such property is paid or to be paid out of any money provided by the State Government to a company being a corporation owned, or controlled by the State, whether provided as loan, grant or otherwise howsoever, for the purpose of payment of the whole or part of the compensation, such compensation shall be deemed to be compensation paid or to be paid out of public revenue].

2. ²⁰[Every declaration] shall be published in the official Gazette and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

3. The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be, and after making such declaration the appropriate Government ²¹[or, as the case may be, the Commissioner] may acquire the land in manner hereinafter appearing.

¹⁶ Explanation was deemed always to have been added by Mah. 24 of 1956. S. 3.

¹⁷ Substituted by Act 13 of 1967, s. 316.

¹⁸ Inserted by Bombay Act 8 of 1958 sch.

¹⁹ Inserted by Bombay Act 8 of 1958, sch.

²⁰ Added by Bombay Act. 35 of 1953. s. 3.

²¹ Substituted by Bombay Act 12 of 1958. s. 2.

7. **After Declaration Collector to take order for acquisition :—**Whenever any land shall have been so declared to be needed for a public purpose or for a company, the appropriate Government or some officer authorised by the appropriate Government in this behalf ²²[or, as the case may be, the Commissioner], shall direct the Collector to take order for the acquisition of the land.

8. **Land to be marked out, measured and planned :—**(same as in Central Act).

9. **Notice to persons interested :—**(same as in Central Act).

10. **Power to require and enforce the making of statements as to names and interests :—**(same as in Central Act).

11. **Enquiry and award by Collector :—**On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of publication of the notification under section 4, sub-section (1) and into the respective interest of the persons claiming the compensation and shall make an award under his hand of—

- (i) the true area of the land ;
- (ii) the compensation which in his opinion should be allowed for the land ; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims he has information, whether or not they have respectively appeared before him ;

²³[Provided that ²⁴(no award allowing compensation exceeding such amount as the State Government may by general order specify) shall be made by the collector without the previous approval of the State Government or such officer as the State Government may appoint in this behalf)] ²⁵[save that the power of such approval shall be exercisable by the Commissioner in lieu of the State Government where award not exceeding one lakh of rupees is made to fix compensation under the provisions of the Bombay Taluqdari Tenure Abolition Act 1949 (Bombay LXII of 1949) ; The Bombay Personal Inams Abolition Act, 1952 (Bom. XLII of 1953) ; the Bombay Merged Territories (Baroda Mulgiras Tenure Abolition) Act, 1953 (Bom. XLV of 1953 ; The Bombay Merged Territories and Areas (Jagirs Abolitions) Act, 1953 (Bom. 39 of 1954). Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 (Bom. XXII of 1955)].

²² Inserted by Bombay Act 35 of 1953. s. 4.

²³ Inserted by Bombay Act 35 of 1953, s. 4. (2)

²⁴ Inserted by Bombay Act 35 of 1953, s. 5.

²⁵ Inserted by Bombay Act 8 of 1958, Sch..

12. Award of Collector when to be final :—(1) Such award shall be filed in the Collector's Office and shall ²⁶[subject to the provisions of section 15A and] except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award ²⁷[or the amendment thereof made under section 12-A] to such of the persons interested as are not present personally or by their representatives when the award ²⁷[or amendment] is made.

²⁸[**12-A. Amendment of the Award :—**Any clerical or arithmetical mistake in an award or errors arising therein from accidental slips or omissions may, at any time not later than six months from the date of the award, be corrected by the Collector either on his motion or on the application of a person interested and the award so corrected shall be deemed to have been amended accordingly.

(2) If the award so amended disclosed any overpayment, the Collector shall, either immediately after the amendment of the award or after the expiry of the time allowed to make a reference to the Court from the amendment of the award, issue a notice to a person to whom overpayment was made that if the amount overpaid is not paid back to the State Government within one month after receipt of the notice, the amount overpaid shall be recovered as an arrear of land revenue and after the expiry of the time stated in the notice the amount shall be so recoverable.]

13. Adjournment of enquiry :—(same as in Central Act).

14. Power to summon and enforce attendance of witnesses and production of documents :—(same as in Central Act).

15. Matters to be considered and neglected :—(same as in Central Act).

²⁹[**15A. Power of State Government to call for proceedings and pass orders thereon.**—The State Government may at any time before an award is made by the collector under section 11, call for and examine the record of any order passed by the Collector or of any inquiry or proceedings of the Collector, for the purpose of satisfying itself as to the legality or propriety of any order passed and as to the regularity of such proceedings. If, in any case, it shall appear to the State Government that any order or proceedings so called for should be modified, annulled or reversed, it may pass such orders thereon as it deems fit.]

16. Power to take possession :—(same as in Central Act).

17. Special powers in cases of urgency :—(1) In cases of urgency, whenever the appropriate Government ³⁰[or the Commissioner] so directs, the Collector, though no such award has been made, may on the expiration

²⁶ Inserted by Bombay Act 35 of 1953, S. 7.

²⁷ Inserted by Bombay Act 8 of 1958, Sch.

²⁸ Inserted by Bombay Act 8 of 1958, Sch.

²⁹ Added by Act 38 of 1923, s. 6.

³⁰ Inserted by Bom. Act of 1958, Sch.

of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1) take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, if it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or of providing convenient connection with or access to any such station, ³¹[or, whenever owing to a like emergency or owing to breaches or other unforeseen event causing damage to roads, rivers, channel or tanks, it becomes necessary for the State Government ³²[or the Commissioner] to acquire immediate possession of any land for the purpose of maintaining road communication or irrigation or water supply service, as the case may be.

The Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government ³³[or as the case may be, of the Commissioner] enter upon and take possession of such land, which shall thereupon ³⁴[vest absolutely in the (Government)] free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24 ; and in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

³⁵[(4) In case of any land to which, in the opinion of the appropriate Government ³⁶[or, as the case may be, of the Commissioner], the provisions of sub-section (1) of sub-section (2) are applicable, the appropriate Government ³⁶[or, as the case may be, of the Commissioner] may direct that the provisions of section 5-A shall not apply and if [it or he does so direct] a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4 sub-section (1)].

³¹ Inserted by Bom. Act 8 of 1958, Sch.

³² Inserted by Bom. Act 8 of 1958, Sch.

³³ Always deemed to have been inserted by Mah. Act 24 of 1965, s. 4.

³⁴ Inserted by Bombay Act 35 of 1953, s. 8.

³⁵ Added by Mah. Act 38 of 1964, s. 3, (b).

³⁶ Inserted by Bombay Act 35 of 1953 s. 9.

³⁷[*Explanation.*—It shall not be necessary for the purpose of sub-section (1) for taking possession of any waste or arable land, to state separately which lands are waste and which are arable.]

PART III

Reference to Court and Procedure thereon.

18. Reference to Court :—(1) Any person interested who has not accepted the award ³⁸[or the amendment thereof] may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award ³⁸[or the amendment thereof] is taken :

Provided that every such application shall be made—

(a) in the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award, ³⁸[or the amendment.]

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Sec. 12, sub-section (2), or within six months from the date of the Collector's award, ³⁸[or the amendment.] whichever period shall first expire.

³⁹[(3) Any order made by the Collector on an application, under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure, 1908 (V of 1908)].

19. Collector's statement to the Court :—(same as in Central Act).

20. Service of notice :—(same as in Central Act).

21. Restriction on scope of proceedings :—(same as in Central Act).

22. Proceedings to be in open Court :—(same as in Central Act).

23. Matters to be considered in determining compensation :—(same as in Central Act).

24. Matters to be neglected in determining compensation :—(same as in Central Act).

25. Rules as to amount of compensation :—(same as in Central Act).

26. Form of award :—(same as in Central Act).

27. Costs :—(1) Every such award ⁴⁰[or the amendment thereof] shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector ⁴⁰[or the amendment thereof] is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court

³⁷ Substituted for 'Sir' by Bombay Act 18 of 1938, s. 2.

³⁸ Substituted for 'Sir' by Bom. Act 18 of 1938, s. 2.

³⁹ Inserted by Bom. Act 35 of 1953, s. 10.

⁴⁰ Substituted by Bombay Act 35 of 1953, s 10 (2).

shall be of the opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. Collector may be directed to pay interest on excess compensation :—If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess, at the rate of ⁴¹[four] per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

PART IV

Apportionment of compensation

29. Particulars of apportionment to be specified :—(same as in Central Act).

30. Dispute as to apportionment :—(same as in Central Act).

PART V

Payment

31. Payment of compensation or deposit of same in court :—(same as in Central Act).

32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate :—(same as in Central Act).

33. Investment of money deposited in other cases :—(same as in Central Act).

34. Payment of interest :—When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with the interest thereon at the rate of ⁴¹[four] per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

PART VI

Temporary Occupation of Land

35. Temporary occupation of waste or arable land—procedure when difference as to compensation exists :—(1) Subject to the provisions of Part VII of this Act whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such term

⁴¹ Substituted by Bom. Act 20 of 1945, s. 3.

as it shall think fit, not exceeding three years from the commencement of such occupation.

⁴²[(1-A). Before issuing a direction under sub-section (1) the State Government may require the Collector to submit—

- (a) a plan of the land which is needed for occupation and use ; and
- (b) an estimate of the compensation that would be payable under sub-section (2) ; and upon the issue of such a requisition the Collector shall cause public notice of the substance of the requisition to be given at some convenient places in the locality in which land is situated.

(1-B). After the issue of such notice, it shall be lawful for any officer either generally or specially authorised by the Collector in this behalf, and for his servants and workmen to exercise the powers conferred by sub-section (2) of section 4.

(1-C) The officer authorised under sub-section (1-B) shall at the time of his entry pay or tender payment for all necessary damage to be done as aforesaid, and, in the case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector and such decision shall be final].

(2) ⁴³[Upon the issue of a direction under sub-section (1) the Collector shall] give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payment as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the court.

36. Power to enter and take possession and compensation on restoration :—(same as in Central Act).

37. Difference as to conditions of land :—(same as in Central Act).

PART VII

ACQUISITION OF LAND FOR COMPANIES

38. Company may be authorised to enter and survey :—(same as in Central Act).

38-A. Industrial concern to be deemed company for certain purposes :—(same as in Central Act).

39. Previous consent of appropriate Government and execution of agreement necessary :—(same as in Central Act).

40. Previous enquiry :—(same as in Central Act).

⁴² Inserted by Bombay Act 20 of 1945. S. 4. (a)

⁴³ Inserted by Bombay Act 35 of 1953, s. 11.

41. Agreement with appropriate Government :—(same as in Central Act).

42. Publication of agreement :—(same as in Central Act).

43. Sections 39 to 42 not to apply where Government bound by agreement :—(same as in Central Act).

44. How agreement with Railway Company may be proved :—(same as in Central Act).

44-A. Restriction on transfer etc. :—(same as in Central Act).

44-B. Land not to be acquired under this Part except for purposes for private companies other than Government companies :—(same as in Central Act).

PART VIII

MISCELLANEOUS

45. Service of Notice :—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under Section ⁴⁴[Section 3-A or 4], by the officer therein mentioned, and, in the case of any other notice, by, or by order of the Collector or the Judge.

(2) Whenever it may be practicable the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, this service may be made on any adult male member of his family residing with him ; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business, and registered under Part III of the [Indian Post Office Act, 1866,] and service of it may be proved by the production of the addressee's receipt.

46. Penalty for obstructing acquisition of land :—Whoever wilfully obstructs any person in doing any of the acts authorised by ⁴⁴[Section 3-A], Sec. 4, ⁴⁵[Sec. 8 or Section 35] or willfully fills up, destroys, damages or displaces any trench, or mark made under ⁴⁴[Section 3-A, Section 4 or Section 35] shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

47. Magistrate to enforce surrender :—(same as in Central Act).

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed :—Except in the case provided for in section 36,

⁴⁴ Inserted by Bombay Act 35 of 1953, s. 11.

⁴⁵ Inserted by Bombay Act 8 of 1958 Sch.

the Government ⁴⁶[or the Commissioner] shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government ⁴⁶[or the Commissioner] withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

49. Acquisition of a part of a house or building :—(same as in Central Act).

50. Acquisition of land at cost of a local authority or company :—(same as in Central Act).

51. Exemption from stamp duty and fees :—(same as in Central Act).

52. Notice in case of suits for any thing done in pursuance of Act :—(same as in Central Act).

⁴⁷[**52-A. Delegation :—**Notwithstanding anything contained in the foregoing provisions, a Collector may, subject to the general or special orders of the ⁴⁸[State] Government, delegate any of his powers or functions under this Act to any officer not below the rank of a Mamlatdar or to a Land Acquisition Officer specially appointed by the ⁴⁸[State] Government in this behalf].

53. Code of Civil Procedure to apply to proceedings before court :—(same as in Central Act).

54. Appeals in proceedings before Court :—(same as in Central Act).

55. Power to make Rules :—(same as in Central Act).

Bombay (Maharashtra) (14)

THE LAND ACQUISITION (MAHARASHTRA EXTENSION AND AMENDMENT) ACT, 1964

(Maharashtra Act No. XXXVIII of 1964)

(The following Act of the Maharashtra Legislature, having been assented to by the President on the 2nd October, 1964, was published in the Maharashtra Government Gazette, Extraordinary, Part IV, dated October 6, 1964/Asvina 14, 1886.)

An Act to extend the Land Acquisition Act, 1894, to the whole of the State of Maharashtra ; to provide as far as practicable for uniformity in the provisions of the Act in its application to the whole of the State ; and for those purposes further to amend the said Act.

⁴⁶ Inserted by Bom. Act 35 of 1949. S. 6.

⁴⁷ Substituted by Adaptation of Lands Order, 1950.

⁴⁸ Substituted by Act 19 of 1921. S. 3.

WHEREAS it is expedient to extend the Land Acquisition Act, 1894 (1 of 1894), to the whole of the State of Maharashtra ; to provide as far as practicable for uniformity in the provisions of the Act in its application to the whole of the State ; and for those purposes further to amend the said Act ; It is hereby enacted in the Fifteenth Year of the Republic of India as follows :

1. Short title, extent and commencement :—(1) This Act may be called the Land Acquisition (Maharashtra Extension and Amendment) Act, 1964.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

2. Extension of Act I of 1894 and rules thereunder as in force in Bombay area to other areas in Maharashtra State, subject to certain modifications :—On the commencement of this Act, the Land Acquisition Act, 1894 (1 of 1894) (hereinafter referred to as "the principal Act") and the rules made thereunder as in force in the Bombay area, except the Land Acquisition (Bombay Amendment) Act, 1948 (Bombay IV of 1948), shall extend and be in force throughout the State of Maharashtra ; and accordingly on such commencement,—

(a) in section 1 of the principal Act,—

(i) in sub-section (2), after the words and letter "comprised in Part B States" the words, "other than the Hyderabad area of the State of Maharashtra" shall be inserted ;

(ii) in sub-section (3), after the figures "1894", the words, brackets and figures, "but in the Hyderabad area of the State of Maharashtra it shall come into force on such day as is appointed under sub-section (3) of section 1 of the Land Acquisition (Maharashtra Extension and Amendment) Act, 1964 (Maharashtra XXXVIII of 1964), shall be added ;

(b) the Land Acquisition Act (Hyderabad IX of 1309 F.) as in force in the Hyderabad area of the State shall stand repealed.

(c) the Land Acquisition (Bombay Amendment) Act, 1960 (Bombay XVII of 1960), shall stand repealed ;

(d) (i) the amendments made in sections 28 and 34 of the principal Act, in its application to the Vidarbha region of the State, by the Central Provinces and Berar Land Acquisition (Amendment) Act, 1939 (C. P. and Berar XXVII of 1939) ;

(ii) the amendments made in sections 3 and 18 of the principal Act, in its application to the Vidarbha region of the State, by the Central Provinces and Berar Land Acquisition (Amendment) Act, 1949 (C. P. and Berar VII of 1949) ; and

(iii) the amendment made in section 17 of the principal Act, in its application to the Vidarbha region of the State, by the Central Provinces and Berar Land Acquisition (Second Amendment) Act, 1949 (C. P. and Berar XXVIII of 1949) ;

shall cease to have effect and shall stand repealed.

(e) the amendments made in sections 28 and 34 of the principal Act by the Land Acquisition (Bombay Amendment) Act, 1938 (Bombay

XVIII of 1938), and in force in the Bombay area of the State, shall be in force in the rest of the State ;

(f) the Amendments made to the principal Act by—

- (i) sections 2 to 4 (both inclusive) of the Land Acquisition (Bombay Amendment) Act, 1945 (Bombay XX of 1945) ;
- (ii) section 6 of the Bombay Land Acquisition Officers Proceedings Validation Act, 1949 (Bombay XXXV of 1949) ;
- (iii) section 2 of the Land Acquisition (Bombay Amendment) Act, 1950 (Bombay XXVII of 1950),
- (iv) sections 2 to 11 (both inclusive) of the Land Acquisition (Bombay Amendment) Act, 1953 (Bombay XXXV of 1953),
- (v) section 2 of the Land Acquisition (Bombay Amendment) Act, 1958 (Bombay XII of 1958), and
- (vi) the notifications issued by the State Government under sub-section (4) of section 3 of the Bombay Commissioners of Divisions Act, 1957 (Bombay VIII of 1958), for amending the principal Act in its application to the Bombay area of the State,

shall extend and be in force throughout the State.

3. Amendments of sections 3 and 18 of Act I of 1894 as extended :—In the principal Act so extended and brought into force throughout the State of Maharashtra,—

(a) In section 3, in clause (d), for the words “the expression ‘Court’ means” the following shall be substituted, namely,—
“the expression ‘Court’ [except in sub-section (3) of section 18] means” ;

(b) to section 18, the following sub-section shall be added at the end, namely,—

“(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure, 1908 (V of 1908).”

4. Savings :—The repeal, by clause (b) of section 2 of this Act, of the Land Acquisition Act (Hyderabad IX of 1309 F.), prevailing in the Hyderabad area of the State of Maharashtra shall not affect—

(a) the previous operation of the Act so repealed ;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed ;

(c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid, any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if this Act had not been passed :

Provided that, subject to the foregoing provision in this section, anything done or any action taken (including any appointment, authorisation or delegation made, notice, notification, direction or order issued, survey, declaration or award made, enquiry held, agreement executed or published or possession taken, but excluding any rule framed) under the provisions of the

repealed Act shall, in so far as it is not inconsistent with the provisions of the principal Act as extended and amended by this Act (hereinafter referred to as "the said Act"), be deemed to have been done or taken under the corresponding provisions of the said Act and shall continue in force unless and until it is superseded by anything done or any action taken under the said Act.

Maharashtra (15)

**THE LAND ACQUISITION (MAHARASHTRA AMENDMENT
AND VALIDATION OF CERTAIN PROCEEDINGS FOR
ACQUISITION OF LANDS) ACT, 1965**

(Maharashtra Act No. XXIV of 1965)

The following Act of the Maharashtra Legislature, having been assented to by the President on the 24th March, 1965, was published in the Maharashtra Government Gazette, Extraordinary, Part IV, dated April 1, 1965/Chaitra 11, 1887.

An Act further to amend the Land Acquisition Act, 1894, in its application to the State of Maharashtra and to validate certain acquisitions and certain proceedings for acquisition.

Whereas by the Commissioner, Bombay Division's Notification No. LAQ-B. 7244-B, dated 5th January, 1963 and No. LAQ-B. 7725, dated 20th March, 1963 under the Land Acquisition Act, 1894 (I of 1894) (hereinafter referred to as "the principal Act") proceedings were taken for the acquisition of lands for the purposes specified in those notifications, namely, for development and utilisation of lands as an industrial area, and the former notification provided that as the Commissioner, Bombay Division, was of the opinion that the lands specified in the said notification were waste or of arable, and that their acquisition was urgently necessary, the provisions of section 5A of the principal Act should not apply in respect of the said lands ;

And whereas, the High Court in Special Civil Application No. 1024 of 1963 (*S. S. Jhaveri v. The State of Maharashtra*) has held that the proceedings for acquisition of lands initiated under the Commissioner, Bombay Division's notifications aforesaid were void on the ground that—

- (a) the Commissioner, Bombay Division, before issuing his notification No. LAQ-B. 7725, dated the 20th March, 1963, did not apply his mind to the question whether the lands specified in that notification were being acquired for a public purpose or for a company, because under an admitted mistake as to the source from which the funds came, he could never have come to a correct decision as to whether or not there existed for a public purpose ;
- (b) as compensation was being paid by the Corporation constituted under the Maharashtra Industrial Development Act, 1961 (Maharashtra II of 1962) (hereinafter referred to as "the said Corporation") out of the sum advanced by way of loan by the State Government, the land was being acquired for the said Corporation which is a company within the meaning of the principal

Act without following the provisions of Part VII of the principal Act ;

- (c) possession of those lands was taken under the provisions of section 17 of the principal Act although the lands were cultivated lands, and therefore not "arable" lands within the meaning of the said section 17, read with clause (aa) of section 3 of the principal Act ; and
- (d) the Commissioner, Bombay Division, did not apply his mind and state in the said notifications which lands were in fact arable, and which were in fact waste ;

And whereas, in pursuance of notifications under the principal Act, proceedings have been or are being taken for the acquisition of lands by following more or less the same procedure which was followed in connection with the acquisition of lands specified in the notifications of the Commissioner, Bombay Division, which were held void by the High Court in Special Civil Application No. 1024 of 1963 aforesaid ; and whereas, in certain acquisitions or proceedings for acquisition of lands, no statement has been made that the lands were waste or arable lands ;

And whereas, after the date of the judgment in that case, certain lands were notified for acquisition and possession also taken, and those notifications have been cancelled and possession of the lands returned or is to be returned to the owners thereof in view of the judgment aforesaid ;

And whereas, it is not possible to return the lands to the owners from whom they were taken in cases where the lands have already been developed, or have been disposed of with undertakings given for the development of those lands ; and whereas in some cases although lands are neither developed nor disposed of as aforesaid, it is not possible to return the lands to the owners thereof as that would interfere with the planning and development of industrial areas ;

And whereas, it is necessary further to amend the principal Act and validate certain acquisitions and proceedings for acquisition of lands ; It is hereby enacted in the Sixteenth Year of the Republic of India as follows :—

1. Short title and commencement :—(1) This Act may be called the Land Acquisition (Maharashtra Amendment and Validation of Certain Proceedings for Acquisition of Lands) Act, 1965.

(2) It shall be deemed to have come into force on the 11th day of February, 1965.

2. Amendment of section 3 of Act I of 1894 :—In section 3 of the Land Acquisition Act, 1894 (I of 1894) hereinafter referred to as "the principal Act") for clause (aa), the following shall be and shall be deemed always to have been substituted, namely,—

"(aa) the expression 'arable land' means land fit for cultivation, whether in fact cultivated or not ; and includes garden land,".

3. Amendment of section 6 of Act I of 1894 :—In section 6 of the principal Act, in sub-section (1), the proviso, the following Explanation shall be and shall be deemed always to have been added, namely,—

"*Explanation.*—Where compensation to be awarded for such property is paid or to be paid out of any money provided by the State Government

to a Company, being a corporation owned or controlled by the State, whether provided as loan, grant or otherwise howsoever, for the purpose of payment of the whole or part of the compensation, such compensation shall be deemed to be compensation paid or to be paid out of public revenues."

4. Amendment of section 17 of Act I of 1894 :—In section 17 of the principal Act, after sub-section (4) the following Explanation shall be and shall be deemed always to have been inserted, namely,—

*"Explanation.—*It shall not be necessary for the purpose of sub-section (1) for taking possession of any waste or arable land, to state separately which lands are waste and which are arable."

5. Validation of certain acquisitions and proceedings for acquisition of lands :—(1) Notwithstanding anything contained in any judgment, decree or order of any court, where any lands have been acquired or purported to be acquired, or where any proceedings have been taken or are being taken, for the acquisition of land for a public purpose or a Company, then subject to sub-section (2), every such acquisition or proceeding for acquisition shall be deemed to be valid and effectual, and shall not be invalid for any one or more of the following grounds, that is to say—

(a) that any of the lands acquired or mentioned in any of the proceedings had been cultivated lands, and therefore were not "arable" lands ; or

(b) that in respect of lands which were in fact waste or arable, in any proceedings or notifications no statement was made that they were waste or arable lands or in any proceedings or notifications it was not specified which of the lands were arable and which waste, and that the authority issuing any notification did not apply its mind to the question whether the lands were arable or waste at all, or which of the lands were in fact arable, and which were in fact waste ; or

(c) that the whole or part of the compensation for such lands has been paid or is to be paid out of any sum provided, whether by way of loan, grant or otherwise howsoever by the State Government to a Company, such Company being a corporation owned or controlled by the State, and that since such sum had become part of the fund of the Company, and any part of the compensation was consequently not paid or to be paid out of public revenues, and that therefore, Part VII of the principal Act should have been followed for the purposes of acquisition ; and that the authority issuing any notification in respect of such lands did not know correctly the source of the compensation awarded or to be awarded, and therefore, did not apply its mind to the question whether the lands acquired or to be acquired, were for a public purpose, or for a Company ;

and accordingly, the acquisition, purported acquisition, or proceedings, shall not be questioned in any court on any one or more of the grounds aforesaid, and any such lands acquired, or purported to be acquired shall be deemed to duly vested in the State Government, and such proceedings shall be deemed to be, validly taken.

(2) The provisions of clause (c) of sub-section (1) shall not apply in respect of acquisitions or proceedings for acquisition of lands—

(i) in special Civil Application No. 1024 of 1963 (*S. S. Jhaveri v. The State of Maharashtra*) and Special Application No. 1121 of 1963 (*Jogindarlal Shamlal v. The State of Maharashtra*) ;

(ii) in respect of which notifications under sections 4 and 6 under the principal Act have been cancelled and the possession of lands has been returned or is to be returned by reason of the fact that the notifications under the principal Act were issued after the date of the judgment in Special Civil Application No. 1024 of 1963 (*S. S. Jhaveri v. The State of Maharashtra*) and possession taken in pursuance thereof, and the lands were neither developed in any manner, nor disposed of.

6. Repeal :—The Land Acquisition (Maharashtra Amendment and Validation of Certain Proceedings for Acquisition of Lands) Ordinance, 1965, (Mah. Ord. 11 of 1965), is hereby repealed ; and anything done or action taken by or under the Ordinance so repealed shall be deemed to have been done or taken under the principal Act as amended by this Act in so far as it is not inconsistent therewith.

PART III

CHAPTER IV-B

Gujarat (1)

THE LAND ACQUISITION (Bombay Amendment) REPEAL ACT 1 OF 1966

GUJARAT ACT NO. 1 OF 1966

An Act to repeal the Land Acquisition (Bombay Amendment) Act 1960

It is hereby enacted in the Sixteenth year of the Republic of India as follows :—

Short Title :—This Act may be called the Land Acquisition (Bombay Amendment) (Repeal) Act, 1965.

2. Repeal of Bombay Act XVII of 1960.—

The Land Acquisition (Bombay Amendment) Act, 1960 (Bombay Act XVII of 1960) is hereby repealed.

Notes

The Land Acquisition (Bombay Amendment) Act 1960 has been recently held by the Supreme Court to be discriminatory within the meaning of Art. 14 of the Constitution and *ultra vires*. The Act of 1960 thereafter is repealed.

Gujarat (2)

THE LAND ACQUISITION (GUJARAT UNIFICATION AND AMENDMENT) ACT, 1963

(Gujarat Act No. 20 of 1965)¹

The following Act of the Gujarat Legislature, having been assented to by the President on the 4th July, 1965, was published in the Gujarat Government Gazette, Extraordinary, Part IV, No. 21, dated July 9, 1965/Asadha 24, 1887.

An Act to provide for uniform application of the Land Acquisition Act, 1894 in the whole of the State of Gujarat and to amend that Act for that purpose and certain other purposes.

It is hereby enacted in the Fourteenth Year of the Republic of India as follows :—

1. **Short title, extent and commencement.** :—(1) This Act may be called the Land Acquisition (Gujarat Unification and Amendment) Act, 1963.

(2) It extends to the whole of the State of Gujarat.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. **Uniform application of Act I of 1894 throughout the State of Gujarat.** :—

(1) The Land Acquisition Act, 1894 (I of 1894), as amended in its application to the Bombay area of the State of Gujarat by the enactments specified in the Schedule is hereby extended to and shall be in force in the Saurashtra area of the State of Gujarat.

(2) The amendments made to the Land Acquisition Act, 1894 (I of 1894) in its application to the Bombay area of the State of Gujarat by the enactments specified in the Schedule are hereby extended to, and shall be in force in, the Kutch area of the State of Gujarat and the Land Acquisition Act, 1894 (I of 1894) shall, from the commencement of this Act be deemed to be amended accordingly also in that area.

3. **Amendment of section 1 of Act I of 1894.** :—In the Land Acquisition Act, 1894 (I of 1894) in its application in accordance with the provisions of section 3 to the State of Gujarat (hereinafter referred to as “the principal Act”), in section 1, after sub-section (3), the following sub-section shall be inserted, namely :—

“(4) On and from the commencement of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963, this Act shall also extend to, and be in force in, the Saurashtra area of the State of Gujarat.”

4. **Amendment of section 3 of Act I of 1894.** :—(1) In clause (f) of section 3 of the principal Act,—

(a) the word “and” occurring after sub-clause (1) shall be deleted ;

(b) after sub-clause (2), the following shall be added, namely :—

“and

¹ First published after having received the assent of the President in the Gujarat Government Gazette on the 9th July 1965.

(3) a housing scheme which the State Government may from time to time undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanction of the State Government by a local authority or company ;”

(2) Nothing in sub-section (1) shall affect the provisions of the Land Acquisition (Bombay Amendment) Act, 1849.

5. Amendment of section 3A of Act I of 1894 :—In section 3A of the principal Act,—

(1) for clause (ii), the following shall be substituted, namely :—

“(ii) to dig or bore into the sub-soil.” ;

(2) for the word “and” at the end of clause (iii) and for clause (iv), the following shall be substituted, namely :—

“(iv) to set out the boundaries of the land likely to be needed and the intended line of the work (if any) likely to be done thereon ;

(v) to mark such levels, boundaries and line by placing marks and cutting trenches ;

(vi) to measure the land so likely to be needed ; and

(vii) where otherwise the survey cannot be completed and the levels taken or the boundaries or lines marked, to cut down and clear away any part of any standing crop, fence or jungle” ;

6. Insertion of new section 3C in Act I of 1894 :—After section 3B of the principal Act, the following new section shall be inserted, namely :—

“**3C. Measurement of land comprising survey number or sub-division :**—In the case of the whole of a survey number or sub-division of a survey number, as defined in the Bombay Land Revenue Code, 1879 (Bombay Act V of 1879) as in force in the Bombay area, the Saurashtra area or, as the case may be, the Kutch area of the State of Gujarat, the area of such survey number or, as the case may be, sub-division as entered in the land records shall be deemed to be the measurement of the land comprising such survey number or sub-division.”

7. Amendment of section 4 of Act I of 1894 :—In section 4 of the principal Act,—

(1) in sub-section (1), after the words “for any public purpose”, the words “or for a Company” shall be inserted ;

(2) in sub-section (2), for the words beginning with words “to mark such levels” and ending with words “trenches ; and” the following shall be substituted namely :

“to mark such levels, boundaries and line by placing marks and cutting trenches ; to measure the land likely to be needed, and”.

8. Amendment of section 8 of Act I of 1894 :—In section 8 of the principal Act, for the words “cause it to be measured”, the words, brackets, figures and letters “cause the land (unless it has already been measured under section 3A or 4 or deemed to be measured under section 3C) to be measured” shall be substituted.

9. Amendment of section 9 of Act I of 1894 :—In section 9 of the principal Act, in sub-section (2), for the words and figure “measurements made under

section 8", the words, figures and letters "measurements according to section 3C or made under section, 3A, 4 or 8" shall be substituted.

10. Amendment of section 11 of Act I of 1894 :—Section 11 of the principal Act shall be re-numbered as sub-section (1) of that section and provisos shall be substituted, namely :

"Provided that no award shall be made by the Collector under this section without the previous approval of the State Government or of such superior officer as the State Government may authorise in this behalf : Provided further that it shall be competent to the State Government to direct that the Collector or such class of officers specially appointed by the State Government to perform the functions of a Collector under this Act may make such award without such approval in such class of cases as the State Government may specify in this behalf."

(2) after sub-section (1), the following sub-sections shall be inserted, namely :—

"(2) Notwithstanding anything contained in sub-section (1) if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appear before him are agreeable to the award which he proposes to make under this section, the Collector may without making further enquiry require such persons to execute an agreement in the form prescribed by the State Government and make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Indian Registration Act, 1908 (XVI of 1908) no agreement made under sub-section (2) shall be liable to registration under that Act."

11. Insertion of section 11A in Act I of 1894 :—After section 11 of the principal Act, the following section shall be inserted, namely :—

"11A. Sums payable to Government to be specified in award :—If the land in respect of which an award is made under section 11 is land which according to the terms of its tenure is not transferable or partible by metes and bounds without the sanction of the State Government or any other competent officer, then out of the amount of compensation awarded therefor a sum, which would have been payable to the State Government under any law for the time being in force, had the land been otherwise transferred, shall be payable to the State Government and the Collector shall specify in the award the sum so payable to the State Government."

12. Amendment of section 17 of Act I of 1894 :—In section 17 of the principal Act, in sub-section (1), the words "waste or arable" shall be deleted.

13. Insertion of new section 17A in Act I of 1894 :—In Part II of the principal Act, after section 17, the following new section shall be inserted, namely :—

"17A. Use of land for any public purpose permitted :—When any land

vests in the State Government or in a corporation owned or controlled by the State Government under the provisions of this Act, it shall be lawful, with the previous sanction of the State Government, to use such land also for any public purpose other than that for which its possession was taken."

14. Amendment of section 23 of Act I of 1894 :—In section 23 of the principal Act, in sub-section (1)—

(i) in clause "fourthly" the following shall be added at the end, namely :—

"and where the person interested is a tenant of the land, only the damage sustained by him by reason of the acquisition injuriously affecting his right as a tenant" ;

(ii) at the end of clause fifthly the word "and" shall be deleted and after clause sixthly, the following shall be added, namely :—"and seventhly, in the case of any land which according to the terms of the tenure on which it is held is not transferable or partible by metes and bounds without the sanction of the State Government or any competent officer, the market-value of similar land held without such restriction."

15. Amendment of section 28 of Act I of 1894 :—In section 28 of the principal Act, for the word "four", the words "four and a half" shall be substituted.

16. Amendment of section 34 of Act I of 1894 :—In section 34 of the principal Act, for the word "four", the words "four and a half" shall be substituted.

17. Amendment of section 35 of Act I of 1894 :—In section 35 of the principal Act, in sub-section (1), the words "waste or arable" shall be deleted.

18. Amendment of section 39 of Act I of 1894 :—In section 39 of the principal Act, for the figure "6" the figure "4" shall be substituted.

19. Amendment of section 40 of Act I of 1894 :—In section 40 of the principal Act, in sub-section (1), the words, figure, letter and brackets "either on the report of the Collector under section 5A sub-section (2) or" shall be deleted.

20. Amendment of section 41 of Act I of 1894 :—In section 41 of the principal Act, the words, figures, brackets and letter "after considering the reports, if any, of the Collector or under section 5A, sub-section (2) or" shall be deleted.

21. Insertion of section 47A in Act I of 1894 :—After section 47 of the principal Act, the following section shall be inserted namely :—

"47A. Executive Magistrate or Commissioner of Police to enforce surrender of land or closure of easement :—(1) In the application of this Act, to the State of Gujarat, for section 47, the provisions of sub-sections (2) and (3) of this section shall be substituted.

(2) If the Collector is opposed or impeded in taking possession under this Act of any land or in preventing enjoyment of any easement extinguished under this Act, he shall, if a District Magistrate, enforce the surrender of the land to himself, or the closure of such easement and if not such Magistrate, he

shall apply in any area for which a Commissioner of Police has been appointed to by the Commissioner of Police and elsewhere to any Executive Magistrate and such Commissioner or Magistrate shall enforce the surrender of the land to the Collector, or as the case may be, the closure of such easement.

- (3) Any action taken by a Collector, Magistrate or Commissioner of Police under sub-section (2) shall not be questioned in any Civil Court and no injunction shall be issued by such Court for restraining such action, but the aggrieved party shall be entitled in such Court to reasonable compensation for any damage suffered by him by reason of the powers under this section being exercised by any such officer wrongfully or without authority."

22. Insertion of section 49A in Act I of 1894 :—After section 49 of the principal Act, the following section shall be inserted, namely :—

"49A. Additional circumstances in which section 49 shall have effect :

- (1) Where the owner has expressed a desire under sub-section (1) of section 49 that the whole of the house, manufactory or building shall be acquired, the provision of that sub-section shall have effect only when the Collector is satisfied that the acquisition of a part of such house, manufactory or building shall so adversely affect the use of remaining part for the purpose for which it was being used as to justify the acquisition of the whole of the house, manufactory or, as the case may be, building.
- (2) Where under the proviso to sub-section (1) of section 49, the owner withdraws or modifies the desire expressed by him it shall be lawful for the Collector to put in force the provisions of this Act for the acquisition of such part of the house, manufactory or building as may be in conformity with such withdrawal or modification".

23. Amendment of section 50 of Act I of 1894 :—In section 50 of the principal Act, in sub-section (2) for the words "may appear and adduce evidence", the words "shall be called upon to appear and adduce evidence if any," shall be substituted.

24. Amendment of section 52A of Act I of 1894 :—Section 52A of the principal Act shall be renumbered as sub-section (1) of that section and after that sub-section the following sub-section shall be inserted, namely :—

- "(2) The State Government may, by notification in the official Gazette, direct that the powers exercisable by it under this Act, except the power to make rules under section 55, shall in such circumstances and under such conditions, if any, as may be specified in such notification be exercisable also by an officer subordinate to it not below the rank of a Collector."

25. Repeal and saving :—(1) On the commencement of this Act, the Land Acquisition Act, 1894 (Adaptation and Application) Ordinance, 1948 (Sau. Ord. XXI of 1948), as in force in the Saurashtra Area of the State of Gujarat immediately before such commencement shall stand repealed.

- (2) The repeal of the Ordinance under sub-section (1) shall not affect,—
- (a) the previous operation thereof ;
 - (b) any right, privilege obligation or liability acquired, accrued or incurred thereunder ;
 - (c) any penalty, forfeiture or punishment incurred in respect of any offence thereunder ; or
 - (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

and any such investigation, legal proceeding or remedy may be instituted continued or enforced and any such penalty, forfeiture or punishment may be imposed under the corresponding provisions of the principal Act.

(3) Anything done or any action taken under the provisions of the Ordinance so repealed shall, in so far as it is not inconsistent with the provisions of the principal Act be deemed to have been done or taken under the corresponding provisions of the principal Act and shall continue to be in force, unless and until superseded by anything done or any action taken under the principal Act.

26. Saving :—Nothing in this Act shall be deemed to affect the acquisition of land for which the appropriate Government is the Central Government.

SCHEDULE

(See Section 2)

Enactments amending the Land Acquisition Act, 1894 in its application to the Bombay area of the State of Gujarat.

Year	No.	Short title of the enactment	Sections providing for amendment of the Land Acquisition Act, 1894
1938	XVIII	The Land Acquisition (Bombay Amendment) Act, 1938.	2
1945	XX	The Land Acquisition (Bombay Amendment) Act, 1945.	2 to 4 (both inclusive)
1949	XXXV	The Bombay Land Acquisition Officers Proceedings Validation Act, 1949.	6
1950	XXVII	The Land Acquisition (Bombay Amendment) Act, 1950.	2
1953	XXXV	The Land Acquisition (Bombay Amendment) Act, 1953.	2 to 11 (both inclusive)
1958	XII	The Land Acquisition (Bombay Amendment) Act, 1957.	2

Gujarat (3)

GUJARAT LAND ACQUISITION (INDUSTRIAL AREAS) ACT NO. XLVI OF 1961

An Act to provide for the principles in respect of determination of compensation for land needed for public purpose in areas suitable for industrial development.

1. Short title and extent :—(1) This Act may be called the Gujarat Land Acquisition (Industrial Areas) Act, 1961.

(2) It extends to the whole of the State of Gujarat.

Notes

The object of this Act is to make a provision to enable the Government to acquire land for the establishment of industries as the market value of such land assessed to value at prices prevailing prior to the entry of any speculative elements into sale transactions in land in those areas due to oil drilling operation and the possibility of industries being established.

2. Definition :—In this Act unless the context otherwise requires—

(1) “notified area” means any area notified under section 3.

(2) “specified date” in relation to a notified area means the 1st day of January, 1961.

3. Power of State Government to notified areas :—For the purpose of facilitating the development of industries in the State of Gujarat, the State Government may by notification published in the *Official Gazette* notify any area in which land in its opinion is suitable or likely to be required for any of the following purposes, that is to say.—

(a) the establishment of any industrial or manufacturing unit by the State Government or a Corporation owned or controlled by the State Government ;

(b) development of land by or for the State Government for the purpose of facilitating the location of industries thereon.

4. Amendments subject to which Land Acquisition Act shall apply to acquisition of land for industrial development :—(1) Where in a notified area any land is acquired under the Land Acquisition Act, 1894 (1 of 1894) (hereinafter referred to as “the said Act”) or under the Land Acquisition Act, 1894 as applied to the Saurashtra area of the State of Gujarat (Sau. Order XXI of 1948) (hereinafter referred to as “the Saurashtra Act”) for any of the purposes specified in the clause (a) and (b) of section 3 then in relation to such acquisition.

(a) The said Act shall have effect as if (i) in section 11, after the words, figures and brackets “section 4; sub-section (1)”, the words brackets and figures “and at the specified date as defined in the Gujarat Land Acquisition (Industrial Areas) Act, 1961 (Guj. XLVI of 1961) (hereinafter referred to as “the said specified date”),” had been inserted ; and

- (ii) in section 23 in the first clause to sub-section (1) after the words, figures and brackets "section 4, sub-section (1) the words" or at the said specified date, whichever is less", had been inserted.
- (b) the Saurashtra Act shall have effect as if—
 - (i) in section 11, after the words, brackets and figures, "and at the specified date as defined in the Gujarat Land Acquisition (Industrial Areas) Act 1961 (Guj. XLVI of 1961) (hereinafter referred to as "the said specified date")" had been inserted, and
 - (ii) in section 23 in first clause of sub-section (i) after the words figures and brackets "section 4, sub-section (1) the words "or at the said specified date, whichever is less" had been inserted.
- (c) Nothing in this section shall apply to any building.

5. Removal of doubt :—For the removal of doubt it is hereby expressly declared that nothing in this Act shall affect the provisions of the Land Acquisition (Bombay Amendment) Act, 1948, (Bom. IV of 1948) and the Land Acquisition (Bombay Amendment) Act 1960, Bom. XVII of 1960).

Notes

But the Land Acquisition (Bombay Amendment) Act XVII of 1960 has been repealed by Gujarat Act 1 of 1966.

PART III

CHAPTER IV-C

BARODA

BARODA LAND ACQUISITION ACT (ACT NO. 20 OF SAMVAT 1985)

Interest on compensation (Notes only)

The Land Acquisition Act of Baroda State has no application since 30th July, 1949 when the Baroda State (Application of Laws) order 1949 came into force and whereby only some enactments specified in schedules were extended to Baroda State and all enactments specified in Schedule III of said Order and in force in Baroda came to be repealed on the cessation of Baroda State on 1st May 1949, with the effect that Land Acquisition Act 1894 read with Act 18 of 1938 of State of Bombay and later clause 16 of Act 20 of 1965 would govern and accordingly interest at a rate of only $4\frac{1}{2}$ per cent would be permissible on excess amount of compensation awarded by Court i.e., on the amount of solatium at the rate of 15 per cent as that forms part of compensation under section 23 of Land Acquisition Act 1894. *Patel Maganbhai Chaturbhai v. The Collector, Mehsana*, (a).

(a) *Patel Maganbhai Chaturbhai v. the Collector, Mehsana*, A.I.R. 1968 Guj. I

PART III

CHAPTER V

DELHI (1)

THE DELHI DEVELOPMENT ACT, 1957

(No. 61 of 1957)

(Extracts)

(27th December, 1957)

An Act to provide for the development of Delhi according to plan and for matters ancillary thereto.

Be it enacted by parliament in the Eighth Year of The Republic of India as follows :

CHAPTER I

Preliminary

1. **Short title, extent and commencement** :—(1) this Act may be called the Delhi Development Act, 1957.

(2) It extends to the whole of the Union Territory of Delhi.

(3) It shall come into force on such date as the Central Government may by notification in the Official Gazette appoint.

2. **Definitions** :—In this Act, unless the context otherwise requires :—

(a) amenity includes roads, water supply, street lighting, drainage sewerage, public works and such other convenience as the Central Government may, by notification in the official Gazette, specify to be an amenity for the purposes of this Act ;

(b) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial or commercial or other purposes, whether in actual use or not ;

(c) the expression "land" and the expression "person interested" shall have the meanings respectively assigned to them in Sec. 3 of the Land Acquisition Act, 1894 (I of 1894).

* * *

CHAPTER V

Acquisition and Disposal of Land

* * *

15. **Compulsory acquisition of land** :—(1) if in the opinion of the Central Government any land is required for the purpose of development, or for any other purpose, under this Act, the Central Government may acquire such

land by publishing in the official Gazette a notice specifying the particular purpose for which such land is required and stating that the Central Government has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1), the Central Government shall by another notice call upon the owner of the land and any other person who in the opinion of the Central Government may be interested therein, to show cause within such time as may be specified in the notice, why the land should not be acquired.

(3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein and after giving such owner and person an opportunity of being heard, the Central Government may pass such orders as it deems fit.

(4) When a notice under sub-section (1) is published in the official Gazette, the land shall on and from the date of such publication, vest absolutely in the Central Government free from all encumbrances.

(5) Where any land is vested in the Central Government under sub-section (4), the Central Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to that Government or any person duly authorized by it in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the Central Government may take possession of the land and may for that purpose use such force as may be necessary.

(7) Where the land has been acquired for the Authority or any local authority, the Central Government shall, after it has taken possession of the land and on payment by the Authority or the local authority concerned of the amount of compensation determined under Sec. 16 and of the other charges incurred by the Government in connection with the acquisition, transfer the land to the Authority or that local authority for the purpose for which the land has been acquired.

16. Compensation for compulsory acquisition of land :—(1) Where any land is acquired by the Central Government under this Act, the Central Government shall pay for such acquisition, compensation the amount of which shall be determined in accordance with the provisions of this section.

(2) Where the amount of compensation can be determined by agreement between the Central Government and the person to be compensated, it shall be determined in accordance with such agreement.

(3) Where no such agreement can be reached, the Central Government shall refer the case to the Collector for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid.

(4) Before finally determining the amount of compensation, the Collector shall give an opportunity to every person to be compensated to state his case as to the amount of compensation.

(5) In determining the amount of compensation, the Collector shall be guided by the following principles, namely,—

(a) no allowance shall be made on account of the acquisition being compulsory ;

(b) the market value of the land shall be taken to be—

(i) the market value of the land on the date on which the notice calling upon the owner to show cause why the land should not be acquired, is issued under sub-section (2) of sec. 15 (hereinafter referred to as 'the date of notice'); such market value being determined on the basis of the use of the land on that date, or

(ii) an amount equal to the sum total of the three following amounts, that is to say, an amount equal to the market value of the land on the 1st day of October, 1955, such market value being determined on the basis of the use of the land on that date, an amount equal to twenty-five per cent of the increase, if any, (not including, however, any increase consequent on any development carried out on the land) in the market value of the land during the period between the 1st day of October, 1955, and the date of notice, and an amount which in the opinion of the Collector represents the reasonable cost of development, if any, (including in the case of agricultural land, the cost of any improvement carried out thereon in the course of agricultural operations) carried out on the land during that period,

whichever is less ;

(c) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose to which it would be applied only in pursuance of statutory powers or for which there is not a market apart from the special needs of a particular purchaser or the requirements of any department of Government or any local or public authority :

(d) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises, or to public health, the amount of that increase shall not be taken into account.

(6) For the purpose of determining the amount of compensation—

(a) the Collector shall have the power to require any person to deliver to him such returns and assessments as he considers necessary ;

(b) the Collector shall also have the power to require any person known or believed to be interested in the land to deliver to him a statement containing, as far as may be practicable, the name of every other person having any interest in the land as co-owner, mortgagee, tenant or otherwise, and the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(7) Every person required to deliver a return, assessment or statement under sub-section (6) shall be deemed to be legally bound to do so within the meaning of Sec. 175 and Sec. 176 of the Indian Penal Code (45 of 1860).

(8) The Collector may hear expert witnesses if it be necessary to do so in any particular case,

(9) The Collector shall be entitled to enter on and inspect any land which is the subject of proceedings before him.

(10) The Collector shall dispose of every case referred to him under sub-section (3) for determination of compensation as expeditiously as possible and in any case within such time as may be prescribed by rules.

(11) The Collector shall determine the amount of costs incurred in any case disposed of by him under this section, and by what persons and in what proportions they are to be paid.

17. Appeal to the District Judge against decision of the Collector :—

(1) Any person aggrieved by the decision of the Collector determining the amount of compensation may within sixty days from the date of such decision appeal to the court of the District Judge of Delhi.

(2) The decision of the court of the District Judge on such appeal and subject only to such decision, the decision of the Collector determining the amount of compensation shall be final and shall not be questioned in any court.

18. Disputes as to apportionment of the compensation :—If any dispute arises as to the apportionment of compensation among persons claiming to be entitled thereto the Central Government shall refer such dispute for the decision of the Court of the District Judge of Delhi and the decision of that court thereon shall be final.

19. Payment of compensation or deposit of the same in court :—(1) Where the amount of compensation is determined by agreement, the Central Government shall pay such amount to the person or persons entitled thereto.

(2) Where the amount of compensation is determined by the Collector under the provisions of Sec. 16, the Central Government shall tender payment of the compensation determined to the persons entitled thereto according to such determination and shall pay to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(3) If the persons entitled to compensation according to the decision of the Collector do not consent to receive it, or if there be no person competent to alienate the land or if there be any dispute as to the title to receive the compensation, the Central Government shall deposit the amount of the compensation in the Court of the District Judge of Delhi :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount of compensation :

Provided further that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation determined under this Act, to pay the same to the person lawfully entitled thereto.

20. Investment of the amount of compensation deposited in court :—

Where any amount of compensation has been deposited in court under Sec. 19, the court may either of its own motion or on the application made by or on behalf of any party interested or claiming to be interested in such amount, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom

as they might have had from the land in respect whereof such amount has been deposited or as near thereto as may be.

21. Disposal of land by the Authority or the local authority concerned :

—(1) Subject to any directions given by the Central Government under this Act, the Authority or, as the case may be, the local authority concerned may dispose of—

(a) any land acquired by the Central Government and transferred to it, without undertaking or carrying out any development thereon ; or

(b) any such land after undertaking or carrying out such development as it thinks fit,

to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the development of Delhi according to plan.

(2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them :

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.

(3) Nothing in this Act shall be construed as enabling the Authority or the local authority concerned to dispose of land by way of gift, mortgage or charge, but subject as aforesaid reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.

22. Nazul land :—(1) The Central Government may, by notification in the official Gazette and upon such terms and conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as “Nazul lands”) for the purpose of development in accordance with the provisions of this Act.

(2) No development of any nazul land shall be undertaken or carried out except by or under the control and supervision of the Authority after such land has been placed at the disposal of the Authority under sub-section (1),

(3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.

(4) If any nazul land placed at the disposal of the Authority under subsection (1) is required at any time thereafter by the Central Government, the authority shall, by notification in the official Gazette, replace it at the disposal of that Government upon such terms and conditions as may be agreed upon between that Government and the Authority.

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

PART III

CHAPTER VI

JAMMU AND KASHMIR

THE STATE (J. & K.) LAND ACQUISITION ACT, 1990/1934 A. D.)

(Act No. X of 1990)

Sanctioned by His Highness the Maharaja Bahadur, vide Prime Minister's endorsement No. G. B. 387, dated 29th January, 1934, and published in the Government Gazette, dated 28th Baisakh, 1991.;

WHEREAS, it is expedient to amend the law for the acquisition of land, needed for public purposes, within the territories comprising the Jammu and Kashmir State, and for determining the amount of compensation to be made on account of such acquisition ; It is hereby enacted as follows :—

PART I

Preliminary

1. Short title, extent and commencement :—(1) This Act may be called the State (J. & K.) Land Acquisition Act No. X of 1990.

(2) It extends to the whole of the territories comprising the Jammu and Kashmir State.

(3) It shall come into force at once.

2. Validation of the former acquisitions of land :—(1) The State Land Acquisition Regulation, 1903, is hereby repealed.

(2) But all proceedings commenced, officers appointed or authorised, agreements published and rules made under the said Regulation shall, as far as may be, be deemed to have been respectively commenced, appointed or authorised, published and made under this Act.

(3) Any Act or document referring to the Regulation shall, as far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

3. Definitions :—In this Act, unless there is something repugnant in the subject or context,—

- (a) the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth ;
- (b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act ; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land ;
- (c) the expression “Court” means the principal Civil Court of original jurisdiction in a district unless the Government has appointed (as it is hereby empowered to do) a special Judicial Officer within any specified local limits to perform the functions of the Court under this Act ;
- ¹[(d) the expression “Collector” means the Collector as defined in the Land Revenue Act, 1996 ; ;
- (e) the expression “Revenue Minister” means the Revenue Minister of the Council of the Jammu and Kashmir State ;
- (f) the following persons shall be deemed to be “entitled to act” as and to the extent hereinafter provided (that is to say) the guardians of minors, or of lunatics or idiots, and trustees for other persons beneficially interested who are under disability, shall be deemed, respectively, the persons entitled to act to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted :

Provided that—

- (i) no person shall be deemed “entitled to act” whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the persons interested, for whom he would otherwise be entitled to act ;
- (ii) in every such case, the person interested may appear by a next friend, or, in default of the appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof ;
- (iii) the provisions of the law in force in the State, for the time being, relating to Civil Procedure, shall, so far as they apply are applicable, in the case of persons interested, appearing before a Collector or Court by a next friend or by a guardian, for the case in proceedings under this Act ; and

1. Clause (d) substituted, *vide* Act III of 2008.
[*Vide* Act X of 1996, original clause (d) was deleted and original clauses (e), (f),

(g) and (h) were relettered as (d), (e), (f) and (g) respectively.]

- (iv) no person "entitled to act" shall be competent to receive the compensation money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase money on a voluntary sale ;
- (g) the expression "public purposes" includes the provision of village sites in districts in which the Government shall have declared by notification in the Jammu and Kashmir Government Gazette that it is customary for the Government to make such provision ;
- (h) the expression "Company" means a Company registered under the Companies Act, No. XI of 1977, and includes a registered society within the meaning of the ¹Co-operative Societies Regulation, Samvat 1970.

PART II

Acquisition

Preliminary Investigation

4. Publication of preliminary notification and powers of officers thereupon :—(1) Whenever it appears to the Government, that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the Government Gazette, and the Collector shall cause public notice of the substances of such notification to be given at convenient places in the said locality.

(2) Thereupon, it shall be lawful for any officer, either generally or specially authorised by the Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality ;
to dig or bore into the sub-soil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches ; and

where otherwise the survey cannot be completed, and the levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least fortnight's notice in writing of his intention to do so.

5. Payment of damage :—The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done

as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Provincial Revenue authority within thirty days of its being pronounced, whereupon, the decision of that officer shall be final.

5-A. Hearing of objections :—(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company, may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

Declaration of intended acquisition

6. Declaration that land is required for public purpose :—(1) When the Government is satisfied after considering the report, if any, made under section 5-A, sub-section (2), that any particular land is needed for public purpose, a declaration shall be made to that effect under the signature of the Revenue Minister or of some officer duly authorised in this behalf :

Provided that, no property shall be acquired by the State unless it is really wanted for State purposes, and that no plot but the one under requisition shall satisfy the requirements of the State : and

Provided that, no such declaration shall be made unless the compensation to be awarded for such property is to be paid by the Company or the person or persons for and on behalf whereof, the intended acquisition has to be made by the Government, or wholly or partly out of the Government revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose, and after making such declaration, the Government may acquire the land in manner hereinafter appearing.

7. After declaration Collector to take order for acquisition :—Whenever any land shall have been so declared to be needed for a public purpose, the Revenue Minister shall direct the Collector to take order for the acquisition of the land.

8. Land to be marked out, measured and planned :—The Collector shall, thereupon cause the land (unless it has been already marked out under

section 4) to be marked out. He shall also cause it to be measured and (if no plan has been made thereof) a plan to be made of the same.

9. Notice to persons interested :—(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that the claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land, to appear personally or by agent, before the Collector at a time and place therein mentioned (such time not being earlier than 30 days after the date of publication of notice) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements made under section 8. The Collector may, in any case, require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case, any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter, addressed to him at his last known residence, address or place of business and registered in accordance with the Postal Rules in force for the time being in that behalf.

10. Power to require and enforce the making of statements as to names and interests :—(1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than thirty days after the date of the requisition) a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest and of the rents and profits (if any) received or receivable on account thereof for 3 years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under the section or section 9, shall be deemed to be legally bound to do so within the meaning of sections 135 and 136 of Ranbir Dand Bidhi.

*Enquiry into measurements, value and claims and award by the
Collector*

11. Enquiry and award by Collector :—On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which, any person interested has stated pursuant to a notice given under section 9, to the measurements made under section 8, and into the value of the land, and into the respective

interests of the persons claiming the compensation, and shall make an award under his hand of—

- (1) the true area of the land ;
- (2) the compensation which, in his opinion, should be allowed for the land ; and
- (3) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information whether or not they have respectively appeared before him.

12. Award of Collector when to be final :—(1) Such award shall be filed in the Collector's office and shall except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and the value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested, as are not present personally or by their representatives when the award is made.

13. Adjournment of enquiry :—The Collector may for any cause, he thinks fit, from time to time, adjourn the enquiry to a day to be fixed by him.

14. Power to summon and enforce attendance of witnesses and production of documents :—For the purpose of enquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court, under the law in force in the State, for the time being relating to the procedure in civil actions.

15. Matters to be considered and neglected :—In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Taking possession

16. Power to take possession :—When the Collector has made an award under section 11, he may take possession of the land, which may thereupon vest absolutely in the Government free from all encumbrances.

17. Special powers in case of urgency :—In cases of urgency, whenever the Government so directs, the Collector, though no such award has been made, may on the expiration of 30 days, from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land, needed for public purposes. Such land shall thereupon vest absolutely in the Government free from all encumbrances :

Provided that, the Collector shall not take possession of any building or part of a building under this sub-section, without giving to the occupier thereof at least 48 hours' notice of his intention to do so, or such longer notice as may be reasonably sufficient, to enable such occupier to remove his movable property from such building without unnecessary inconvenience : and

Provided in every case, under this section, the Collector shall at the time of taking possession, offer to the persons interested compensation for the standing crop and trees (if any) on such land and for any other damage sustained by them, caused by such dispossession and not excepted in section 24, and in case such offer is not accepted, the value of such crops and trees, and the amount of such other damage shall be allowed for, in awarding compensation for the land under the provisions therein contained :

Provided also that, in the case of any land to which in the opinion of the Government the provisions of sub-section (1) are applicable, the Government may direct that the provisions of section 5-A shall not apply, and if it does so direct, a declaration may be made under section 6 in respect of the land at any time after publication of the notification under section 4, sub-section (1)

PART III

Reference to Court and Procedure thereon

18. Reference to Court :—(1) Any person interested who has not accepted the award, may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken, provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within 6 weeks from the date of the Collector's award ;

(b) in other cases, within 6 weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within 6 months from the date of the Collector's award, whichever period shall first expire.

19. Collector's statement to the Court :—(1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land with particulars of any trees, buildings or standing crops thereon ;

(b) the names of the persons whom he has reason to think interested in such land ;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11 ;

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined ;

(e) the name of persons out of those interested in such land who have accepted the award.

(2) To the said statement shall be attached a schedule, giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested respectively.

20. Service of notice :—The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day to be served on the following persons :—

(a) the applicant :

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded ; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

21. Restriction on scope of proceedings :—The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22. Proceedings to be in open Court :—Every such proceeding shall take place in open Court, and all persons entitled to practise in any civil Court within the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.

23. Matters to be considered in determining compensation :—(1) In determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the declaration relating thereto under section 6 ;

secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land ;

fourthly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner, or his earnings ;

fifthly, if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ;

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration, under section 6, and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition.

24. Matters to be neglected in determining compensation :— But the Court shall not take into consideration—

- first*, the degree of urgency which has led to the acquisition ;
- secondly*, any disinclination of the person interested to part with the land acquired ;
- thirdly*, any damage sustained by him, which if caused by a private person would not render such person liable to a suit ;
- fourthly*, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;
- fifthly*, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;
- sixthly*, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or
- seventhly*, any outlay or improvements on, or disposal of the land acquired, commenced, made or effected, without the sanction of the Collector, after the date of the publication of the declaration under section 6.

25. Rules as to amount of compensation :—(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

26. (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9) respectively of the Code of Civil Procedure.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(2) When award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector, that some deduction from the costs should be made or that he should pay a part of the Collector's costs.

28. If the sum which in the opinion of the Court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

29. Notwithstanding anything hereinabove contained, the market-value of the land to be acquired shall not form part of the amount of compensation to be awarded under this Act except to the extent of $\frac{1}{3}$ rd share thereof or enter into consideration except to that extent in assessing such compensation, where the land to be acquired is situate in a place in which the land is owned directly by the Government as proprietor.

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PART IV

Apportionment of Compensation

30. **Particulars of apportionment to be specified :—**Where there are several persons interested if such persons agree to the apportionment of the compensation, the particulars of such apportionment shall be specified in the award and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

31. **Dispute as to apportionment :—**When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V

Payment

32. **Payment of compensation or deposit of same in Court :—**(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto, according to the award, and shall pay to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court, to which a reference under section 18 would be submitted :

Provided that, any person admitted to be interested, may receive such payment, under protest as to the sufficiency of the amount :

Provided also that, no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that, nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(2) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

33. Investment of money deposited in respect of lands belonging to persons incompetent to alienate :—(1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded, belonged to any person, who had no power to alienate the same, the Court shall—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which money shall have been deposited was held ;
or

(b) if such purchase cannot be effected forthwith then in such securities as the Court shall think fit, and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would, for the time being, have been entitled to the possession of the said land, and such moneys shall remain so deposited or invested until the same be applied—

(i) in the purchase of such other lands as aforesaid ; or

(ii) if such purchase cannot be effected forthwith then in such other securities as the Court shall think fit ; or

(iii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses, incidental thereto; to be paid by the Collector, namely,—

(a) the costs of such investments as aforesaid ;

(b) the costs of the orders for the payment of (the interest or) other proceeds of the securities upon which such moneys are for the time being invested and for the payment out of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

34. Investment of money deposited in other cases :—When any money shall have been deposited in Court under the Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money,

order the same to be invested in such Government or other approved securities and as it may think proper and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner, as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

35. Payment of interest :—When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 6 per centum per annum from the time of so taking possession, until it shall have been so paid or deposited.

PART VI

Temporary Occupation of Land

36. Temporary occupation of waste or arable land. Procedure when difference as to compensation exists :—(1) Whenever it appears to the Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, the Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding 3 years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall for the occupation and use thereof for such term as aforesaid and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

37. Power to enter and take possession and compensation on restoration :—(1) On payment of such compensation or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land and use or permit the use thereof in accordance with the term of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose.

38. Difference as to condition of land :—In case the Collector and persons interested differ as to the condition of the land at the expiration of

the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII

Acquisition of Land for Companies

39. The provisions of sections 6 to 35 (both inclusive) shall not be put in force in order to acquire land for any Company, unless previous sanction of the Government shall have been obtained and unless the said Company shall have executed the agreement hereinafter mentioned.

40. (1) Such previous sanction shall not be given unless the Government is satisfied either on the report of the Collector under section 5-A, sub-section (2) or by an enquiry held as hereinafter provided,—

(a) that such acquisition is needed for the construction of some works, and

(b) that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the Revenue Minister shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of the documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, in the case of a civil court.

41. If the Government is satisfied after considering the report, if any, of the Collector under section 5-A, sub-section (2) or on the fact of the officer making the enquiry under section 39 that the proposed acquisition is needed for the construction of a work and that such work is likely to prove useful to the public, he shall require the Company to enter into an agreement with the Government providing to its satisfaction for the following matter, namely,—

(i) the payment to Government of the cost of the acquisition ;

(ii) the transfer on such payment of the land to the Company ;

(iii) the terms on which the land shall be held by the Company ;

(iv) the time within which and the conditions on which the work shall be executed and maintained ; and

(v) the term on which the public shall be entitled to use the work.

42. Every such agreement shall, as soon as may be after its execution, be published in the Government Gazette and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

PART VIII

Miscellaneous

43. Service of notice :—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a

notice under section 4, by the officer therein mentioned, and in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him ; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer wall of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein, at his last known residence, address or place of business, and registered in accordance with the rules in force for the time being in that behalf, and service of it may be proved by the production of the addressee's receipt.

44. Penalty for obstructing acquisition of land :—Whoever wilfully obstructs any person in doing any of the acts authorised by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

45. Magistrate to enforce surrender :—If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, if not a Magistrate, he shall apply to a Magistrate, and such Magistrate shall enforce the surrender of the land to the Collector.

46. Completion of acquisition not compulsory, but compensation to be awarded when not completed :—(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

47. Acquisition of part of house or building :—(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired :

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire, that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined ; in deciding on such a reference, the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1) *thirdly*, by a person interested on account of the severing of the land to be acquired from his other land, the Government is of opinion that the claim is unreasonable or excessive, it may at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary ; but the Collector shall without delay furnish a copy of the order of the Government to the person interested and shall thereafter proceed to make his award under section 11.

48. Acquisition of land at cost of a local body, person or body of persons :—(1) When the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund, controlled or managed by a local body or of any person or body of persons, whether corporate or not, the charges of, and incidental to, such acquisition shall be defrayed from or by such fund or such person or body of persons.

(2) In any proceedings held before a Collector or Court in such cases the local authority or the person or the body of persons concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

Provided that, no such person or a body of persons shall be entitled to demand a reference under section 18.

49. Exemption from stamp duty and fees :—No award or agreement made under this Act shall be chargeable with stamp duty and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

50. Notice in case of suits for anything done in pursuance of this Act :—No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act without giving to such person two months' previous notice in writing of the intended proceeding and of the cause thereof, nor after tender of sufficient amends.

51. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the law in force in Jammu and Kashmir State for the time being relating to the procedure in civil actions shall apply to all proceedings before the Court under this Act.

52. Subject to the provisions of law in force for the time being in the State relating to the procedure in civil actions, applicable to appeals from original decrees, an appeal shall lie to the State High Court from any part of the award of the Court in any proceedings under this Act.

¹[52-A. **Delegation** :—The Government may by order direct that all or any of the powers and duties conferred or imposed on the Government be exercised or performed by the Revenue Minister.]

53. (1) The Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall be published in the Government Gazette, and shall thereupon have the force of law.

PART III

CHAPTER VII

Kerala

THE KERALA LAND ACQUISITION ACT, 1961

(Act 21 of 1962)²

An Act to unify and amend the law for acquisition of land for public purposes in the State of Kerala

Preamble :—Whereas it is expedient to unify and amend the law for the acquisition of land needed for public purposes and for determining the amount of compensation to be given on account of such acquisition in the State of Kerala ;

Be it enacted in the Twelfth Year of the Republic of India as follows :

PART I

Preliminary

1. **Short title, extent and commencement** :—(1) This Act may be called the Kerala Land Acquisition Act, 1961.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

¹ Section 52-A inserted, vide Act XII of 2001.

² Received the assent of the President on the 31st August, 1962, and published in *Kerala Gazette*, Extraordinary, dated 6-9-1962,

2. Definitions :—In this Act, unless the context otherwise requires,—

- (1) 'land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth ;
- (2) 'person interested' includes all persons claiming or entitled to claim an interest in compensation payable on account of the acquisition of land under this Act ; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land ;
- (3) 'Collector' means the Collector of the district and includes any officer appointed by the Government to perform the functions of a Collector under this Act ;
- (4) 'company' means a company as defined in S. 3 of the Companies Act, 1956 (Central Act I of 1956) and includes a foreign company within the meaning of S. 591 of that Act, a society registered under the Societies Registration Act, 1860 (Central Act 21 of 1860) as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 or under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act XII of 1955) and a registered society within the meaning of the Co-operative Societies Act for the time being in force ;
- (5) 'Court' means a Land Acquisition Court established, or any civil court invested with the jurisdiction of a Land Acquisition Court, under section 58 ;
- (6) 'Government' means, in relation to the acquisition of land for the purposes of the Union, the Central Government, and, in relation to the acquisition of land for any other purposes, the State Government ;
- (7) the following persons shall be deemed 'persons entitled to act' as and to the extent hereinafter provided, that is to say—
 - (a) trustees for other persons beneficially interested shall be deemed to be the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted, if free from disability ; and
 - (b) the guardians of minors and the managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted :

Provided that—

- (i) no person shall be deemed 'entitled to act' whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act ;
- (ii) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof ;

- (iii) the provisions of Order XXXII of the First Schedule to the Code of Civil Procedure, 1908, shall *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case in proceedings under this Act ; and
- (iv) no person 'entitled to act' shall be competent to receive the compensation money, payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a votuntary sale.

PART II

ACQUISITION

Preliminary Investigation

3. Publication of preliminary notification and powers of officers thereupon :

—(1) Whenever it appears to the Government or to the Collector that land in any locality within the State of Kerala or within the jurisdiction of the Collector, as the case may be, is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon, it shall be lawful for any officer, either generally or specially authorised by the Government or the Collector and for his servants and workmen,—

- (a) to enter upon and survey and take levels of any land in such locality ;
- (b) to dig or bore into the sub-soil ;
- (c) to set out the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made thereon ;
- (d) to mark such levels, boundaries and line by placing marks and cutting trenches ;
- (e) where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked to cut down and clear away any part of any standing crop, fence or jungle ; and
- (f) to do all other acts necessary to ascertain whether the land is adapted for such purpose :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

4. Payment for damages :—The officer so authorised shall, at the time of such entry pay or tender payment for any damage which may be done by the acts aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

5. Hearing of objections :—(1) Any person interested in any land which has been notified under sub-section (1) of section 3 as being needed or likely to be needed for a public purpose may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard either in person or by counsel and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, submit the case,—

(i) where the preliminary notification under sub-section (1) of section 3 was published by the Government, to the Government ;

(ii) where the preliminary notification under sub-section (1) of section 3 was published by himself, to the Board of Revenue ;

for the decision of the Government or the Board of Revenue, as the case may be, together with the record of the proceedings held by him and a report containing his recommendations on the objections.

The decision of the Government or the Board of Revenue, as the case may be, shall be final.

Declaration of Intended Acquisition

6. Declaration that land is required for public purpose :—(1) Subject to the provisions of Part VII of this Act, when the Government or the Board of Revenue are or is satisfied after considering the report made by the Collector under sub-section (2) of section 5 that any particular land is needed for a public purpose, a declaration shall be made to that effect under the signature of an officer competent to authenticate the orders of the Government or the Board of Revenue, as the case may be :

¹[Provided that no such declaration shall be made in respect of a land after the expiry of a period of two years from the date of the publication of the notification under sub-section (1) of section 3 in respect of such land.]

(2) The declaration shall be published in the Gazette and shall state the district, taluk and village in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

¹[(3) Where no declaration under this section is made in respect of a land within the period specified in the proviso to sub-section (1), the notification under sub-section (1) of section 3 in respect of such land shall be deemed to have been cancelled.]

7. After declaration the Collector to take order for acquisition :—When ever any land shall have been so declared by the Government or the Board of Revenue to be needed for a public purpose, the Government or the Board of Revenue, as the case may be, shall direct the Collector to take order for the acquisition of the land.

8. Lands to be marked out, measured and planned :—The Collector shall thereupon cause the land (unless it has already been marked out under section 3) to be marked out. He shall also cause it to be measured and if no plan has been made thereof a plan to be made of the same.

9. Notice to persons interested :—(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intend to take possession of the land and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections, if any, to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by registered post in a letter addressed to him at his last known residence, address or place of business.

(5) The notice shall also be published in the Gazette and shall be deemed to be sufficient notice to all persons interested in the land as between the Government and such persons.

10. Power to require and enforce the making of statements as to names and interests :—(1) The Collector may require any such person to make or deliver to him at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition) a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land, or any part thereof, as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Enquiry into measurements, value and claims and award by the Collector

11. Enquiry and award by Collector :—On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections, if any, which any person interested has stated pursuant to a notice given under section 9 to the measurements

made under section 8, and into the value of the land at the date of the publication of the notification under sub-section (1) of section 3, and into the respective interest of the persons claiming the compensation, and shall make an award under his hand of—

- (i) the true area of the land ;
- (ii) the compensation which in his opinion shall be allowed for the land ; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

12. Award of Collector when to be final :—(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

13. Adjournment of enquiry :—The Collector may, for any cause he thinks fit, from time to time, adjourn the enquiry to a day to be fixed by him.

14. Power to summon and enforce attendance of witnesses and production of documents :—For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and so far as may be, in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

15. Matters to be considered and neglected :—In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 25 and 26.

16. Award in case of agreement as to the amount of compensation :—

(1) If the Collector and all the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

(2) Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Government and all persons interested, of the value of the land and the amount of compensation allowed for the same.

17. Valuation statement to be approved by superior authority :—No award shall be made by the Collector under section 11 or section 16 unless the valuation statement prepared in such manner as may be prescribed by rules is approved,—

- (i) where the Collector making the award is not the District Collector, by the District Collector ; and
- (ii) where the Collector making the award is the District Collector, by the Board of Revenue.

Taking possession

18. Power to take possession :—When the Collector has made an award under section 11 or section 16, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

19. Special powers in cases where land is needed urgently :—(1) In cases of urgency, whenever the Government or the District Collector, for reasons to be recorded in writing, so direct or directs, the Collector may, on the expiration of fifteen days from the publication of the notice mentioned in sub-section (1) of section 9, take possession of any land needed for a public purpose though no award has been made. Such land shall thereupon vest absolutely in the Government, free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least three days' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(2) In every case under sub-section (1), the Collector shall at the time of taking possession, offer to the persons interested compensation for the standing crops and trees, if any, on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 26 ; and in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3) In every case under sub-section (1), the Collector, may, on a request in writing by all the parties interested and on furnishing sufficient security, after such summary enquiry as he may think fit to institute and after satisfying himself that the parties are lawfully entitled to receive the compensation pay a sum not exceeding fifty per cent of the probable compensation that may be finally awarded in respect of such acquisition, provided that no payment shall be made where there is a dispute as regards the person entitled to the compensation. The advance compensation paid under this sub-section shall be adjusted towards the final compensation payable under the award.

(4) In the case of any land to which, in the opinion of the Government or the District Collector, the provisions of sub-section (1) are applicable, the Government or the District Collector, as the case may be, may direct that the provisions of section 5 shall not apply, and, if they or he so direct or directs, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under sub-section (1) of section 3.

PART III

Reference to Court and Procedure thereon

20. Reference to Court :—(1) Any person interested who has not accepted the award may, by written application to the Collector, require

that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2). The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made—

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award ;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under sub-section (2) of section 12 or within six months from the date of the Collector's award, whichever period shall first expire.

21. Collector's statement to the Court :—(1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

- (a) the situation and extent of the land with particulars of any trees, buildings or standing crops thereon ;
- (b) the names of the persons whom he has reason to think interested in such land ;
- (c) the amount awarded for damages and paid or tendered under sections 4 and 19 or either of them, and the amount of compensation awarded under section 11 ; and
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2). To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

22. Service of notice :—The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely :

- (a) the applicant ;
- (b) all persons interested in the objection, except such, if any, of them as have consented without protest to receive payment of the compensation awarded ; and
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

23. Restriction on scope of proceedings :—The scope of the enquiry in every such proceedings shall be restricted to a consideration of the interests of the persons affected by the objection.

24. Proceedings to be in open court :—Every such proceedings shall take place in open Court and all persons entitled to practise in any Civil Court in the State shall be entitled to appear, plead and act, as the case may be, on such proceedings.

25. Matters to be considered in determining compensation :—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the notification under sub-section (1) of section 3 ;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops of trees which may be on the land at the time of the Collector's taking possession thereof ;

thirdly, the damage, if any, sustained by the person interested, at the time of the Collector's taking possession of the land by reason of severing such land from his other land ;

fourthly, the damage, if any, sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earning ;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change ; and

sixthly, the damage, if any, *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided the Court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition.

26. Matters to be neglected in determining compensation :—But the court shall not take into consideration—

first, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under sub-section (1) of section 3.

27. Rules as to amount of compensation :—(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

28. Form of awards :—(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (1) of section 25 and also the amounts, if any, respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of clause (2) of section 2 and clause (9) of section 2, respectively, of the Code of Civil Procedure, 1908.

29. Costs :—Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

30. Collector may be directed to pay interest on excess compensation :—If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of four per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

PART IV

Apportionment of Compensation

31. Particulars of apportionment to be specified :—Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

32. Dispute as to apportionment :—When the amount of compensation has been settled under section 11 or section 16, if any, dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V

Payment

33. Payment of compensation or deposit of the same in Court :—(1) On making an award under section 11 or section 16, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by any one or more of the contingencies mentioned in sub-section (2).

(2) If they do not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 20 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 20 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange or in such other way as may be equitable having regard to the interest of the parties concerned.

(4) Nothing in sub-section (3) shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

34. Investment of money deposited in respect of lands belonging to persons incompetent to alienate :—(1) If any money is deposited in Court under sub-section (2) of section 33, and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall order the money to be invested—

(a) in the purchase of other lands to be held under like title and conditions of ownership as the land in respect of which such money has been deposited was held ; or

(b) if such purchase cannot be effected forthwith, then, in such Government or other approved securities as the Court may think fit, and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid ; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incidental thereto, to be paid by the Collector, namely,—

(a) the costs of such investments as aforesaid ;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

35. Investment of money deposited in other cases :—When any money has been deposited in Court under this Act for any case other than that mentioned in section 34, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money has been deposited or as near thereto as may be.

36. Payment of interest :—When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of four per centum per annum from the date of so taking possession until it shall have been so paid or deposited.

PART VI

Temporary occupation of land

37. Temporary occupation of land and payment of compensation :—

(1) Subject to the provisions of Part VII of this Act, whenever it appears to the Government that the temporary occupation and use of any land are needed for any public purpose, the Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding five years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed and shall, for the occupation and use thereof for such term as aforesaid, and for the materials, if any, to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested are unable to agree as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court. The

amount of compensation payable shall be an amount equal to the rent which the land would normally fetch if leased, together with five per cent of such rent in consideration of the compulsory nature of the occupation of the land.

38. Power to enter and take possession and compensation on restoration :

—(1) On payment of such compensation or on executing such agreement or on making a reference under section 37, the Collector may enter upon and take possession of the land and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage, if any, done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Government shall proceed under this Act to acquire the land as it if was needed permanently for a public purpose.

39. Difference as to condition of land :—In case the Collector and the persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII

Acquisition of Land for Companies

40. Company may be authorised to enter and survey :—(1) The Government may authorise any officer of any company desiring to acquire land for its purposes to exercise the powers conferred by section 3.

(2) In every such case, section 3 shall be construed as if for the words "for such purpose" the words "for the purposes of the company" were substituted ; and section 4 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

41. Industrial concern to be deemed company for certain purposes :—An industrial concern, ordinarily employing not less than one hundred workmen, owned by an individual or by an association of individuals and not being a company, desiring to acquire land for the erection of of dwelling-houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a company for the purposes of this Part, and the reference to company in section 55 shall be interpreted as reference also to a concern.

42. Previous consent of Government and execution of agreement necessary :—The provisions of sections 6 to 39, both inclusive, shall not be put in force in order to acquire land for any company unless with the previous consent of the Government, or unless the company shall have executed the agreement hereinafter mentioned.

43. Previous enquiry :—(1) Such consent shall not be given unless the Government be satisfied, either on the report of the Collector under sub-section (2) of section 5 or by an enquiry held as hereinafter provided,—

- (a) that the purpose of the acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the company or for the provision of amenities directly connected therewith, or
- ¹[(aa) that such acquisition is needed for the construction of some building or work for a company which is engaged, or is taking steps for engaging itself, in any industry or work which is for a public purpose, and that the building or work which such company is intending to construct is meant to subserve the public purpose of the industry or work for which it is being constructed, or;
- (b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public,
- (c) that such acquisition is needed for a purpose calculated to promote and develop agriculture, industry or co-operation.

(2) Such enquiry shall be held by such officer and at such time and place as the Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908, in the case of a Civil Court.

44. Agreement with Government :—If the Government are satisfied, after considering the report, if any, of the Collector under sub-section (2) of section 5, or on the report of the officer making an enquiry under section 43, that ²[the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) or clause (c) of sub-section (1) of section 43,] the Government shall require the company to enter into an agreement with them providing, to the satisfaction of the Government, for the following matters, namely :

- (1) the payment to the Government of the cost of the acquisition ;
- (2) the transfer, on such payment, of the land to the company ;
- (3) the terms on which the land shall be held by the company ;
- (4) where the acquisition is for the purpose of erecting dwelling-houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling-houses or amenities shall be erected or provided ;
- ³[(4A) where the acquisition is for the construction of any building or work referred to in clause (aa) of sub-section (1) of section 43, the time within which, and the conditions on which, the building or work shall be constructed or executed ; and]
- (5) where the acquisition is for the construction of any other work, the time within which, and the conditions on which, the work

¹ Ins. by Kerala Act 4 of 1966 (w. e. f. 10-5-1966).

² Subs. by Kerala Act 4 of 1966 (w. e. f. 10-5-1966).

³ Ins. by *ibid.*

shall be executed and maintained and the terms on which the public shall be entitled to use the work.

45. Publication of agreement :—Every such agreement shall, as soon as may be after its execution, be published in the Gazette and shall thereupon, so far as regards the terms on which the public shall be entitled to use the work, have the same effect as if it had formed part of this Act.

[45A. Restriction on transfer, etc. :—No company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage gift, lease or otherwise, except with the previous sanction of the Government.

45B. Land not to be acquired under this part except for certain purpose for private companies other than Government companies :—Notwithstanding anything contained in this Act, no land shall be acquired under this Part, except for the purpose mentioned in clause (a) of sub-section (1) of section 43, for a private company which is not a Government company.

Explanation.—"Private company" and "Government company" shall have the meanings respectively assigned to them in the Companies Act, 1956 (Central Act I of 1956);

PART VIII

Acquisition of Land for Projects

²[46. Provisions of this Part applicable in the case of specified projects :—The provisions of this Part shall apply to the acquisition of land in such project area as may be specified by the Government by notification under section 47A :

Provided that such provisions shall not apply to any acquisition of land in a project area where the notification under sub-section (1) of section 3 in respect of the acquisition is not published within three years from the date of the publication of the notification under section 47A.

47. Definitions :—In this Part, unless the context otherwise requires,—

(i) "project area" means the area covered by one or more revenue villages or survey numbers; the whole or any portion of which is needed or is likely to be needed for a project purpose ;

(ii) "project purpose" means the purpose of execution, expansion or development of a project.

47A. Notification declaring projects to which the provisions of this Part shall apply :—Where the Government are of opinion that as a result of a project undertaken or proposed to be undertaken by them, there is likelihood of a speculative rise in the land value in the project area, they may, by notification in the Gazette, specify the project area.

48. Acquisition of land in project areas :—Whenever land is proposed to be acquired in a project area, the provisions of this Act shall apply subject to the following modifications, namely :

¹ Ins. by *Ibid.*

² Subs. by Kerala Act 4 of 1966 (w. e. f. 10-5-1966),

(1) for section 11, the following section shall be substituted, namely :

‘11. Enquiry and award by Collector.—On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into—

- (a) the objections, if any, which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8 ;
- (b) the value of the land at the date of the publication of the notification under section 47A ;
- (c) the value of any improvements to the land effected after the date referred to in clause (b) and before the date of the publication of the notification under sub-section (1) of section 3 ;
- (d) where there has been a normal rise in land value in the locality in which the project area lies after the date of the publication of the notification under section 47A and before the date of the publication of the notification under sub-section (1) of section 3, such rise in price ;
- (e) the value of the land at the date of the publication of the notification under sub-section (1) of section 3 ; and
- (f) the respective interest of the persons claiming compensation, and shall make an award under his hand of—
 - (i) the true area of the land ;
 - (ii) the compensation which in his opinion shall be allowed for the land ; and
 - (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

Explanation.—For the purposes of this section and clause *first* of sub-section (1) of section 25, the expression “land value” shall mean value of land not including improvements thereon ;

(2) in sub-section (1) of section 25, for clause *first*, the following clause shall be substituted, namely :

- “*first*, (a) the market-value of the land at the date of the publication of the notification under section 47A, the value of any improvements to the land effected after that date and before the date of the publication of the notification under sub-section (1) of section 3, and, where there has been a normal rise in land value in the locality in which the project area lies after the date of the publication of the notification under section 47A and before the date of the publication of the notification under sub-section (1) of section 3, such rise in price subject to a maximum of twenty per cent of the market-value of the land at the date of the publication of the notification under section 47A, or
- (b) the market-value of the land at the date of the publication of the notification under sub-section (1) of section 3, whichever is less ;]

PART IX

Miscellaneous

49. Service of notices :—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 3, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him, and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired :

Provided that if the Collector or Judge shall so direct, a notice may be sent by registered post in a letter addressed to the person named therein at his last known residence, address or place of business, and service of it may be proved by the production of the addressee's receipt.

50. Penalty for obstructing acquisition of land :—Whoever wilfully obstructs any person in doing any of the acts authorised by section 3 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 3, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

51. Magistrate to enforce surrender :—If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate and such Magistrate shall enforce the surrender of the land to the Collector.

52. Completion of acquisition not compulsory, but compensation to be awarded when not completed :—(1) Except in the case provided for in section 38, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraw from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply so far as may be, to the determination of the compensation payable under this section.

53. Acquisition of part of house or building :—(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired.

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court, and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under sub-section (1) of section 25, by a person interested, on account of the severing of the land to be acquired from his other land, the Government are of opinion that the claim is unreasonable or excessive, they may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case provided for in sub-section (2), no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary ; but the Collector shall without delay furnish a copy of the order of the Government to the person interested, and shall thereafter proceed to make his award under section 11.

54. Power to continue the proceedings started by another Collector :— Any Collector who has started proceedings under this Act for the acquisition of land may, on the appointment of any other officer by the Government to perform the functions of a Collector under this Act for the acquisition of the same land, make over the proceedings to the officer so appointed, and the officer so appointed may continue the proceedings from the stage at which the former left it, as if the proceedings had been started by him.

55. Acquisition of land at cost of a local authority or company :—(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of a company, the charges of land incidental to such acquisition shall be defrayed from or by such fund or company.

(2) In any proceeding held before a Collector or Court in such cases, the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or company shall be entitled to demand a reference under section 20.

56. Exemption from stamp duty and fees :—No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

57. Notice in case of suits for anything done in pursuance of Act :—No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such

person one month's previous notice in writing of the intended proceeding, and of the cause thereof.

58. Establishment of Land Acquisition Courts :—(1) The Government may, by notification in the Gazette, establish Land Acquisition Courts at any place or places in the State of Kerala.

(2) When a Land Acquisition Court has been established under sub-section (1), a Judicial Officer not below the rank of a Subordinate Judge shall be appointed as Judge of the Court by notification in the Gazette.

(3) The local limits of the jurisdiction of the Land Acquisition Courts and the pecuniary limits of the jurisdiction of such Courts shall be such as the Government may, by notification in the Gazette, fix.

(4) Notwithstanding anything contained in sub-section (1), (2) and (3) the Government may, by notification in the Gazette, invest any Civil Court not lower in rank to that of a Subordinate Judge's Court with the jurisdiction of a Land Acquisition Court subject to such territorial and pecuniary limits of jurisdiction as may be specified in the notification.

59. Code of Civil Procedure to apply to proceedings before Court :—Same in so far as they may be inconsistent with anything contained in this Act, the provisions of Code of Civil Procedure, 1908, shall apply to all proceedings before the Court under this Act.

60. Appeals in proceedings before Court :—Appeals shall lie from the award or from any part of the award of the Court as if the award or part of the award is a decree passed by a Civil Court under the provisions of the Code of Civil Procedure, 1908 and subject to such rules as may be prescribed.

61. Power to make rules :—(1) Government may, by notification in the Gazette make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement.

(2) All rules made under this section shall be laid before the Legislative Assembly for not less than fourteen days, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as the Legislative Assembly may make during the Session in which they are so laid or the Session immediately following.

62. Repeal :—The Land Acquisition Act (Travancore Act XI of 1089) and the Land Acquisition Act (Cochin Act II of 1970) are hereby repealed and the Land Acquisition Act, 1894, (Central Act 1 of 1894) shall cease to apply to the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1955 (Central Act 37 of 1956).

PART III

CHAPTER VIII

Madhya Pradesh (1)

THE LAND ACQUISITION (MADHYA PRADESH AMENDMENT AND VALIDATION OF ACQUISITION OF LANDS) ACT 1967

Madhya Pradesh Act No. 11 of 1967

Received the assent of President on 1-5-67 and Published in M. P. Gazette on 3-5-67

An Act to amend certain notifications issued and declarations made under the Land Acquisition Act, 1894, in its application to the State of Madhya Pradesh and to validate certain acquisitions and proceedings for acquisition.

Be it enacted by the Madhya Pradesh Legislature in the Eighteenth year of the Republic of India as follows :—

1. Short title :—This Act may be called the Land Acquisition (Madhya Pradesh Amendment and Validation of Acquisition of Lands) Act, 1967.

2. Amendment of certain notifications issued under Section 4 of Act I of 1894 :—In the notifications issued under section 4 of the Land Acquisition Act, 1894 (I of 1894), as specified in column (1) of the Table given in Part A of the Schedule, for the entries in column (2) specifying the area to be acquired, the entries as in the corresponding entries in column (3) of the said Table shall be substituted.

3. Amendment of certain declaration made under Section 6 of Act I of 1894 :—In the declarations made under section 6 of the Land Acquisition Act, 1894 (I of 1894) as specified in Part B of the schedule for the words “for a public purpose” and “for public purpose” or “public purpose”, where they occur the words “for purposes of a company” or “of purpose” shall respectively be substituted.

4. Amendment made by Sections 2 and 3 to have retrospective effect :—The amendments made by sections 2 and 3 shall be deemed to have formed part of the notifications and declarations concerned from the commencement thereof.

5. Validations of acquisitions and proceedings for acquisition of lands made under notification and declarations specified in the Schedule :—Notwithstanding any judgement, decree or order of any Court and anything contained in sections 4 and 6 Part VII of the Land Acquisition Act, 1894 (I of 1894), in its application to the State of Madhya Pradesh where any lands have been acquired or purported to be acquired or where any proceedings have been taken or are being taken for the acquisition of land for a company and possession of lands has been taken and has not been returned to the owner thereof before the 25th day of February, 1937, then every such acquisition, purported acquisition or proceedings for acquisition

shall be deemed to be valid and effectual for all purposes and shall not be invalid for any one or more of the following grounds or reasons, namely :—

- (a) that the notifications issued under section 4 did not properly specify the land to be acquired :
- (b) That the declaration made under Section 6 did not specify that the land is needed for a company : or
- (c) that there was failure to comply with any of the provisions of Part VII.

and accordingly, the acquisition, purported acquisition or proceedings shall not be questioned on any one or more of the grounds of reasons afore-said, and any such land acquired or purported to be acquired shall be deemed to duly vest in the State Government, and all such proceedings shall be deemed to be validly taken.

6. Removal of doubt :—For removal of doubt, it is hereby declared that section 7 of the Land Acquisition (Amendment) Act, 1962 (31 of 1962), shall apply to such acquisition of land for a company in respect of which proceedings for acquisition were started prior to the 20th day of July 1962 under the Land Acquisition Act, 1894 (I of 1894), but were not completed prior to the said day.

7. Repeal :—The Land Acquisition (Madhya Pradesh Amendment and Validation of Acquisition of Land) Ordinance, 1967 (No. 4 of 1967) is hereby repealed.

Schedule

Part 'A'

(see Section 2)

* * * * *

(For the schedule see the Madhya Pradesh Gazette dated May 2, 1967, pages 1621-1644).

Madhya Pradesh (2)

THE MADHYA PRADESH BHUMI SUDHAR YOJANA ADHINIYAM, 1967

Madhya Pradesh Act 13 of 1967

(Published in Madhya Pradesh Gazette on 31-3-67, P. 1206)

(Extracts)

An Act to provide for the preparation and execution of Land Improvement Scheme including schemes for the conservation and improvement of soil resources, the prevention or mitigation of soil erosion, the protection of land against damage by floods or drought and the reclamation of waste land in Madhya Pradesh.

* * * * *

CHAPTER VI

RECLAMATION OF WASTE LAND

21. Order for taking possession of waste land :—(1) If the Board is satisfied that for the purpose of executing any scheme of reclamation of waste land sanctioned under this Act it is necessary that temporary possession of any waste land should be taken it may by order in writing direct the District Committee to take temporary possession of such land on such date as may be specified in that order.

(2) The order shall be made in such form, and brought to the notice of the owner or owners of the land, in such manner as may be prescribed.

(3) On the date specified in the order, the officer authorised by the District Committee shall enter upon and take possession of the land.

22. Arrangement for Reclamation :—When the land has been taken possession of, the officer appointed by the District Committee for the purpose may arrange for its reclamation.—

(a) by retaining it under his management for such period as he thinks fit : or

(b) by settling it for such period and on such terms as may be fixed by the District Committee with the person or persons who on the date of taking possession of the land were in lawful possession of the land or were entitled to such possession or, if any such person is dead, with his successor-in-interest : or

(c) by combination of the methods aforesaid :

Provided that the total period for which the land is retained or settled under this section shall not exceed ten years.

23. Claim for arrears of rent not to be enforced against Board, etc. :—No claim of the owner to any arrears of rent accrued or due in respect of the land for the period prior to the date of taking possession shall thereafter be enforced by any Court whether in execution of a decree or otherwise, against the State Government or the Board or the District Committee or against any person holding the land under the District Committee or against the land during the period such land is in the possession of the District Committee under sub-section (3) of section 21 :

Provided that in computing the period of limitation for a suit or an application for the execution of decree, the time during which the enforcement of such claims is barred under this section shall be excluded.

24. Termination of possession on completion of reclamation :—(1) When the reclamation of the land is, in the opinion of the Collector, complete and in any case before the expiry of the period of ten years from the date of taking possession, the Collector shall after making an enquiry in the prescribed manner by order in writing,—

(a) declare the possession of the land shall be restored on such date as may be specified in the order, to the owner who on the date of taking possession was in lawful possession of the land or was entitled to such possession, or if he is dead, to his successor-in-interest ;

- (b) determine the person to whom possession is to be restored :
- (c) where such person is a tenant determine the rent payable on account of the use or occupation of the land : and
- (d) where the land or any part thereof has been afforested, regulate the building of trees in such land according to a working plan.

(2) On the date specified in the said order, possession of the land shall be deemed to have been delivered by the District Committee to the person determined under clause (b) of sub-section (1).

(3) The delivery of possession of the land to the person determined under clause (b) of sub-section (1) shall be a final and full discharge of the District Committee from all liability in respect of such delivery, but shall not prejudice any rights in respect of the land to which any other person may be entitled, by the process of law, to enforce against the person to whom possession of the land has been so delivered.

25. Compensation for period of possession :—(1) As soon as may be, after the date of taking possession of the land, the Collector shall make an inquiry in the prescribed manner and determine,—

(a) in respect of any land which on the said date was in the occupation of a tenant—

- (i) the annual rent payable by him : and
- (ii) the average net annual income, if any, after deducting the rent derived by him during the three years immediately preceding the said date.

(b) in respect of any other land, the average net annual income, if any, after deducting land revenue cesses and rates, if any payable, derived by the owner during the three years immediately preceding the said date.

(2) There shall be payable by the Collector as compensation on each anniversary of the date of taking possession until the date referred to in sub-section (2) of section 24—

(a) in respect of such land as is referred to in clause (a) of sub-section (1), the amount determined under sub-clause (i) thereof to the landlord and the amount determined under sub-clause (ii) to the tenant ; and

(b) in respect of any other land, the amount determined under clause (b) of sub-section (1) to the owner.

(3) For the purpose of this section 'landlord' means the person under whom the tenant holds land and to whom the tenant, is, or but for special contract would be liable to pay rent for that land, and any reference to an owner, landlord or tenant shall be deemed to include reference to the predecessors and successors-in-interest of the owners, landlord or tenant.

* * * * *

(4) **Repeal :—**The Madhya Pradesh Bhumi Sudhar Yojana Adhyadesh 1966 (No. 17 of 1966) is hereby repealed.

Madhya Pradesh (3)

The C. P. & Berar Municipalities Act No. II of 1922

(Extracts)

CHAPTER V

Property, Contracts and Liabilities

37. Every committee shall be a body corporate by the name of the municipal committee of its municipality, and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and, subject to the provisions of this Act or of any rules made thereunder, to transfer any property held by it, and to contract and to do all other things necessary for the purposes of its constitution, and may sue and be sued in its corporate name.

38. (1) Subject to any special reservation made or to any special conditions imposed by the State Government, all property of the nature hereinafter in this section specified and situated within the limits of the municipality shall vest in and be under the control of the committee, and, with all other property which has already vested or may hereafter vest in the committee, shall be held and applied by it for the purposes of this Act, that is to say,—

- (a) all public town-walls; gates, markets, slaughter-houses manure and night-soil depots and public buildings of every description which have been constructed or are maintained out of the municipal fund ;
- (b) all public streams, springs and works for the supply, storage and distribution of water for public purposes, and all bridges, buildings, engines, materials and things connected therewith or appertaining thereto and also any adjacent land (not being private property) appertaining to any public tank or well ;
- (c) all public sewers and drains, and all sewers, drains culverts and water-courses in, alongside or under any street, and all works, materials and things appertaining thereto ;
- (d) all dust, dirt, dung, ashes refuse, animal matter or filth, or rubbish of any kind, or dead bodies of animals, collected by the committee from the streets, houses, privies, sewers, cesspools or elsewhere, or deposited in places fixed by the committee under Sec. 118.
- (e) all public lamps, lamp-posts and apparatus connected therewith or appertaining thereto ;
- (f) all land or other property transferred to the committee by the Central Government or the State Government or acquired by gift, purchase or otherwise for local public purposes ; and
- (g) all public streets, not being open spaces or lands owned by the Government, and the pavements, stones and other materials thereof,

and also all trees, erections, materials, implements and things provided for such streets.

(2) The State Government may, by notification, direct that any property which has vested in the Committee shall cease to be so vested, and thereupon the property specified in the notification shall cease to be so vested and the State Government may pass such orders as it thinks fit regarding the disposal and management of such property.

(3) Where any immovable property is transferred, otherwise than by sale, by the State Government to a committee, for public purposes, it shall be deemed to be a condition of such transfer unless specially provided to the contrary, that should the property be at any time resumed by the Government, the compensation payable therefor shall, notwithstanding anything to the contrary in the Land Acquisition Act, 1894 (I of 1894), in no case exceed the amount, if any, paid to the Government for the transfer, together with the cost or the present value, whichever shall be less, of any buildings erected or other works executed on the land by the committee.

39. (1) The management, control and administration of every public institution maintained out of the municipal fund shall vest in the committee :

Provided that the extent of the independent authority of the committee in respect of any such institution may be prescribed by rules made under this Act.

(2) When any public institution has been placed under the direction, management and control of the committee, all property, endowments and funds belongs thereto shall be held by the committee in trust for the purposes to which such property, endowment and funds were lawfully applicable at the time when the institution was so placed :

Provided that nothing in this section shall be held to prevent the vesting of any trust property in the Treasury of Charitable Endowments under the Charitable Endowment Act, 1890 (VI of 1890).

40. (1) When any land, whether within or without the limits of a municipality, is required for the purposes of this Act, the State Government may, at the request of the committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894 (I of 1894) : and on the payment by the committee of the compensation awarded under that Act, and of any other charges incurred by the State Government in connection with the acquisition, the land shall vest in the committee.

Explanation.—When any land is required for a new street, or for the improvement of an existing street, the committee may proceed to acquire, in addition to the land to be occupied by the street, the land necessary or the sites of the buildings to be erected on the sides of the street, and such land shall be deemed to be required for the purposes of this Act.

(2) A committee shall not, without the previous sanction of the State Government, transfer any land which has been acquired for and vests in the committee under sub-section (1) or divert such land to a purpose other than the purpose for which it has been acquired.

41. The committee may, with the sanction of the State Government, transfer to Government any property vested in the committee under Sec.

38 or Sec. 39 but not so as to affect any trust or public right subject to which the property is held.

42. Subject to such exceptions as the State Government may by general or special order direct, no committee shall transfer any immovable property except in pursuance of a resolution passed at meeting by a majority of not less than two-thirds of its members and in accordance with rules made under this Act no committee shall transfer any property which has been vested in it by the Government except with the sanction of the State Government :

Provided that nothing in this section shall apply to leases of immovable property for a term not exceeding three years.

43. Nothing in this Act shall affect the Local Authorities Loans Act, 1914 (IX of 1914).

44. (1) Contracts made by or on behalf of a committee other than the sale or purchase of movables and contracts of service with servants, shall be in writing and shall be signed by the president or vice-president and by the secretary :

Provided that—

(1) the committee may make by-laws providing for the delegation of its powers of making or signing any contract or class of contract to one or more of its members or to the secretary ;

(2) subject to any law for the time being in force, any contract whereof the value or amount does not exceed fifty rupees may be made orally.

(3) No contract entered into otherwise than in conformity with the provisions of this section shall be binding on the committee.

44-A. (1) No officer or servant appointed or employed by a committee under this Act shall, without the written permission of the Deputy Commissioner, in anywise be connected or interested in any bargain or contract made with the committee or any of the purposes of this Act.

(2) If any such officer or servant is so concerned or interested or, under colour of his office or employment, accepts any fee or reward whatsoever other than his poor salary or allowances, the committee, or the president who appointed such officer or servant and in the case of any officer specified in or under proviso (i) to sub-sec. (1) of Sec. 25 and an officer appointed under Sec. 25A, the State Government may declare that he shall be incapable afterwards of holding or continuing in any office or employment of the committee under this Act.

(3) An appeal shall lie to the State Government from any decision of the committee or the president.

(4) Nothing in this section shall bar a prosecution under Sec. 45.

45. (1) If any member, officer or servant of a committee is, without the written permission of the Deputy Commissioner, directly or indirectly interested in any contract made with such committee, he shall be deemed to have committed an offence under Sec. 168 of the Indian Penal Code (XIV of 1860).

(2) A member, officer or servant of a committee shall not, by reason only of being a shareholder in, or a member of, any incorporated or registered company, be deemed to be interested in any contract entered into

between the company and the committee, but he shall not take part in any proceedings of the committee relating to any such contract.

46. Every member of a committee shall be deemed to be a municipal commissioner within the meaning of any enactment for the time being in force.

47. No suit shall be maintainable against any committee, or any member, officer or servant thereof, or any person acting under the direction of any such committee, member, officer or servant, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any rule or by-law made thereunder.

48. (1) No suit shall be instituted against any committee or any member, officer or servant thereof or any person acting under the direction of any such committee, member, officer or servant for anything done or purporting to be done under this Act, until the expiration of two months next after notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims has been, in the case of a committee, delivered or left at its office, and, in the case of any such member, officer, servant or person as aforesaid, delivered to him or left at his office or usual place of abode ; and the plaint shall contain a statement that such notice has been so delivered or left,

(2) Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action.

(3) Nothing in this section shall be deemed to apply to any suit instituted under Sec. 54 of the Specific Relief Act, 1877 (1 of 1877).

49. (1) If any member, officer or servant of a committee makes or directs to be made any payment or application of any money or other property belonging to or under the control of such committee to any purpose not authorized by or under this Act, or assents to, or concurs or participates in any affirmative vote or proceeding relating thereto he shall be individually liable to such committee for the loss or damage caused thereby, unless he proved that he acted in good faith and with due care and attention.

(2) Every member or officer or servant of a committee shall be liable to such committee for the loss of any money or the loss of, or damage to other property belonging to it or under its control of such loss or damage is a direct consequence of his negligence or misconduct.

(3) No suit shall be instituted by a committee against any member thereof under sub-section (1) or sub-section (2) except with the previous sanction of the State Government.

(4) Notwithstanding anything contained in sub-section (3), a suit under sub-section (1) or sub-section (2) may be instituted by the State Government.

(5) No suit shall be instituted under this section after the expiration of six years from the date when the cause of action arose.

(6) A suit instituted under this section shall not be subject to the provisions of Sec. 48.

49-A. The State Government may, by notification, delegate all or any of its powers under this Act, except the power to make rules, to any authority which it may deem fit.

CHAPTER XV

General Provisions, Notices and Appeals

General Provisions

163. (1) In cases of emergency the president or, in his absence or during the vacancy of his office, a vice-president or any member or officer specially empowered in this behalf by the committee, may direct the execution of any work or the doing of any Act which the committee is empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the municipal fund :

Provided that every direction given under this sub-section shall be reported to the next following meeting of the committee, and that no act shall be done under this sub-section in contravention of any order of the committee.

(2) The president or, in his absence or during the vacancy of his office, a vice-president may prohibit, until the matter has been considered by the committee, the doing of any act which is, in his opinion, undesirable in the public interests (or in contravention of any provision in this Act or any rule made thereunder) :

Provided the act is one which the committee has power to prohibit :

Provided further that every direction given under this sub-section shall forthwith be reported to the Deputy Commissioner.

163-A. In cases of emergency, the president or, in his absence a vice-president may exercise the powers of the committee under Secs. 91, 110, 164, 177 (3), 218 (1) and 219 (1).

238. Acquisition of unhealthy area :—On the publication of the notification in Sec. 237, the Committee shall be empowered to acquire, under the Land Acquisition Act, 1894, the whole or any part of the area covered thereby.

239. Modification in Land Acquisition Act, 1894 :—For the purposes of Sec. 238, the land Acquisition Act, 1894, shall be subject to the modifications in the Schedule hereto annexed.

THE SCHEDULE

Modifications in the Land Acquisition Act, 1894

1. Amendment of Sec. 11 :—To Sec. 11 the following shall be deemed to be added, namely :

“and

(iv) the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of ten per centum mentioned in Sec. 23, sub-section (2), as having been actually and reasonably incurred

by such person in preparing his claim and putting his case before the Collector.

The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant."

2. Amendment of sec. 15 :—In sec. 15, for the word and figures "and 24" the figures, words and letters, "24 and 24-A" shall be deemed to be substituted.

3. Amendment of sec. 17 :—(1) In sec. 17, sub-section (3), after the figures "24" the words figures and letter "or Section 24-A" shall be deemed to be inserted.

(2) To the said Sec. 17, the following shall be deemed to be added, namely :

"(4) When proceedings have been taken under this section for the acquisition of any land and any person sustains damages in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession".

4. Amendment of sec. 18 :—At the end of Sec. 18, sub-sec. (1), the words "or the amount of costs allowed" shall be deemed to be inserted.

5. Amendment of Sec. 19 :—After the words "amount of compensation" in clause (c) of Sec. 20, the words "or costs" shall be deemed to be inserted.

6. Amendment of Sec. 20 :—After the words "amount of the compensation" in clause (c) of Sec. 20, the words "or costs" shall be deemed to be inserted.

7. Amendment of Sec. 23 :—(1) In sub-section (2) of Sec. 23, after the words "in every case" the following shall be inserted :

"except where the land acquired is, in the opinion of the Local Government, grossly insanitary or unfit for human habitation," and, for the word "fifteen" the word "ten" shall be deemed to have been substituted.

(2) At the end of Sec. 23, the following shall be deemed to be added, namely :

"(3) For the purposes of clause *first* of sub-section (1) of this section,

(a) the market value of the land shall be deemed to be the market value according to the disposition of the land at the date of the publication of the declaration relating thereto under Sec. 6 ;

(b) if it be shown that, before such declaration was published, the owner of the land had taken active steps and incurred expenditure to secure more profitable disposition of same, further compensation, based on his actual loss, may be paid to him ;

(c) if the market value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

(d) if the market value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid declaration was published, such increase shall be disregarded, unless it be proved that the

improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;

- (e) if the market value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market value shall be deemed to be the market value of the land if put to ordinary uses ; and
- (f) if the market value of any building is especially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market value shall be deemed to be the market value of the building if occupied by such number of persons only as could be accommodated in it without risk or danger from overcrowding."

8. Amendment of Sec. 24 :—For clause *seventhly* of Sec. 24, the following shall be deemed to be substituted, namely :

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date of the publication of the declaration under Sec. 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

9. After Sec. 24, the following shall be deemed to be inserted, namely :

"24-A. Further provisions for determining compensation :—In determining the amount of compensation to be awarded for any land acquired for the committee under this Act, the Court shall also have regard to the following provisions, namely :

- (i) when any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under Sec. 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;
- (ii) if in the opinion of the Court, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

10. Amendment of Sec. 31 :—(1) After the words "the compensation" in sub-section (1) of Sec. 31 and after the words "the amount of the compensation" in sub-section (2) of that section, the words "and costs (if any)" shall be deemed to be inserted.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of Sec. 31, the words "or costs" shall be deemed to be inserted.

11. Amendment of Sec. 49 :—After sub-section (1) of Sec. 49, the following shall be deemed to be inserted, namely :

"(1-A) For the purposes of sub-section (1), land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

M. P. (4)

NAGPUR IMPROVEMENT TRUST ACT (XXXVI OF 1936)

(Extracts)

58. Power to purchase or lease land by agreement :—The trust may enter into an agreement with any person for the acquisition, by purchase, lease or exchange by the Trust from such person, of any land which the trust is authorized to acquire, or any interest in such land.

59. Power to acquire land under the Land Acquisition Act, 1894 :—The Trust may, with the previous sanction of the provincial Government, acquire land under the provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Act, for carrying out any of the purposes of this Act.

Notes :—A suit filed against the Provincial Government and the Nagpur Improvement Trust for a declaration that certain Land Acquisition proceedings for the purposes of the Trust are illegal, is not liable to be dismissed as against the Government for the reason that it is barred by limitation as against the trust when the suit is in time as against the Government. The plaintiff could have sued the Government alone without claiming any relief against the Trust and the Trust was a proper party rather than a necessary party. *Vide* Sec. 50, Land Acquisition Act. *Central India Spring, Weaving and Manufacturing Co. Ltd. v. Prov. Govt., C. P. and Berar*, A. I. R. 1945, Nag. 129 ; 1945, N. L. J. 183.

THE SCHEDULE

PART I

[See Preamble and Sec. 3]

Notification referred to in the Preamble and Sec. 3.	Name of Municipal Committee referred to in the notification.
(1)	(2)
1. No. 2873-1977-M-XIII, dated the 25th May, 1948	.. Sindhi.
2. No. 3807-2536-M-XIII, dated the 7th July, 1948	.. Multai.
3. No. 4554-2936-M-XIII, dated the 10th August, 1948	.. Ghatanji.
4. No. 5663-1343-M-XIII, dated the 29th September, 1948	.. Karelignj.
5. No. 5668-3525-M-XIII, dated the 29th September, 1948	.. Waraseoni.
6. No. 5673-3497-M-XIII, dated the 29th September, 1948	.. Betul-Bazar.
7. No. 6756-3857-M-XIII, dated the 24th November, 1948	.. Shendurjana.
8. No. 6762-3156-M-XIII, dated the 24th November, 1948	.. Chandur-Bazar.
9. No. 7057-3918-M-XIII, dated the 2nd December, 1948	.. Chandur Railway.
10. No. 37-5098-M-XIII, dated the 4th January, 1948	.. Ballarpur.
11. No. 96-5218-M-XIII, dated the 8th January, 1949	.. Piparia.
12. No. 257-5501-M-XIII, dated the 18th January, 1949	.. Deulgaon-Raja.
13. No. 5334-3513-M-XIII, dated the 6th December, 1949	.. Mungeli.
14. No. 2028-2342-M-XIII, dated the 15th May, 1950	.. Champa.

PART II

(See Sec. 4)

Name of the Municipal Committee referred to in Sec. 4.

1. Sindhi.
2. Ghatanji.
3. Kareligunj.

60. Tribunal to be constituted :—A Tribunal shall be constituted, as provided in Sec. 62 for the purposes of performing the functions of the Court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894.

61. Modification of the Land Acquisition Act, 1894 :—For the purpose of acquiring land under the Land Acquisition Act, 1894, for the Trust—

- (a) the Tribunal shall, except for the purposes of Sec. 54 of that Act, be deemed to be the Judge thereunder ;
- (b) the Act shall be subject to the further modifications as indicated in the Schedule ;
- (c) the President of the Tribunal may summon witnesses and enforce their attendance and may compel the production of documents, by the same means, and so far as may be, in the same manner, as is provided in case of a Civil Court under the Code of Civil Procedure, 1908 ; and
- (d) the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894 and shall be final.

Notes :—The award of the Tribunal is declared to be final. It is not therefore subject to any challenge by way of an appeal or revision under Sec. 115, C. P. C. *Sridhar Atmaram v. Collector of Nagpur*, A. I. R. 1951, Nag. 90 refers to I. L. R. (1945) Nag. 399.

62. Constitution of Tribunal :—(1) The Tribunal shall consist of a President and two assessors.

63. Remuneration of members of Tribunal :—The Provincial Government may prescribe by rules such remuneration, if any, as it may think fit, either by way of monthly salary or by way of fees, or partly in one of these ways and partly in the other, for the president and each member of the Tribunal.

64. Officers and servants of Tribunal :—(1) The president of the Tribunal shall, from time to time, prepare a statement showing,—

- (a) the number and grades of the clerks and other officers and servants who he considers should be maintained for carrying on the business of the Tribunal ;
- (b) the amount of the salary to be paid to each such officer and servant.

(2) All statements prepared under sub-section (1) shall be subject to the previous sanction of the Provincial Government.

(3) Subject to any directions contained in any Statement prepared under sub-section (1), and to rules made under Sec. 89, the power of appointing, promoting, and granting, leave to officers and servants of the Tribunal, and

the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

65. Mode of payment :—The remuneration, if any, prescribed under Sec. 63 for members of the Tribunal, and the salaries, leave allowances and acting allowances prescribed under this Act for officers and servants of the Tribunal, shall be paid by the Trust to the president of the Tribunal for distribution.

66. Power to make rules for Tribunal :—(1) The Provincial Government may make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by Tribunals established under this Act.

(2) All such rules shall be subject to the condition of previous publication.

67. Award of Tribunal how to be determined :—(1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,—

(2) The president of the Tribunal shall be either—

(a) a member of the Imperial or Provincial Civil Service, Judicial Branch, of not less than ten years' standing in such service, who has for at least three years served as District Judge or held judicial office not inferior to that of a Subordinate Judge of the first Class ;
or

(b) a barrister, advocate or pleader of not less than ten years' standing who has practised as an advocate or pleader in the High Court of Judicature at Nagpur.

(3) The President of the Tribunal and one of the assessors shall be appointed by the Provincial Government, and the other assessor shall be appointed by the Municipal Committee, or in default of appointment by the Municipal Committee within two months of its being asked, by the Provincial Government.

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or would, if he were a Trustee, be liable to removal by the Provincial Government under Sec. 10.

(4) The term of office of a member of the Tribunal shall be two years ; but any member shall, subject to the proviso to sub-section (3), be eligible for re-appointment on the expiration of the term.

(5) The Provincial Government may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as member of the Tribunal.

(6) When any person ceases to be a member of the Tribunal or when any member is temporarily absent owing to illness or any unavoidable cause, the authority which appointed him shall forthwith appoint a fit person to be a member in his place. Where the authority so appointing was the Municipal Committee and the Municipal Committee fails to make fresh appointment within two months of being asked to do so by the Provincial Government, the appointment may be made by the Provincial Government—

(a) if there is a disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail ;

(b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary ; and when so tried, and decided, the decision of the President shall be deemed to be the decision of the Tribunal ; and

(c) notwithstanding anything contained in clauses (a) and (b), the decision of the President of the Tribunal on all questions of law and procedure shall be final.

(7) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by a competent Civil Court within the local limits of whose jurisdiction it was made as if it were a decree of that Court.

68. Abandonment of acquisition in consideration of special payment :—

(1) Whenever in any area comprised in any improvement scheme under this Act the Provincial Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Trust, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Trust in that behalf.

(2) The Trust shall admit every such application if it—

(a) reaches it before the time fixed by the Deputy Commissioner under Sec. 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by any person who has any interest in the land or holds a lease thereof, with an unexpired period of seven years.

(3) On the admission by the Trust of any such application it shall forthwith inform the Deputy Commissioner ; and the Deputy Commissioner shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or, with the permission of the Trust, at any time before the Deputy Commissioner has taken possession of the land under Sec. 16 of the Land Acquisition Act, 1894, the person from whom the Trust agreed to accept the sum so fixed may, if the Trust is satisfied that the security offered by him is sufficient, execute an agreement with the Trust either—

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment of interest at the rate to be agreed upon by such person to the Trust until the said sum has been paid in full, and to make the first annual payment of such interest four years after the date of agreement :

Provided that the Trust may, at any time before the Deputy Commissioner has taken possession of the land under Sec. 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4) or when any payment has been accepted in pursuance of the proviso to that sub-section in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on interest of that person.

(7) If any instalment payable under an agreement executed in pursuance of clause (i) of sub-section (4) be not paid on the date on which it is due, the sum fixed by the Trust under sub-section (3) shall be payable on that date, in addition to the said instalment.

(8) At any time after an agreement has been executed in pursuance of clause (i) of sub-section (4), any person may pay in full the charge created thereby, with interest at the agreed rate, up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Trust by any other person except an heir, executor or administrator of the person first aforesaid claiming to have an interest in the land.

75. Agreement or payment not to bar acquisition under a fresh declaration :—If any land, in respect of which an agreement has been executed or a payment has been accepted in pursuance of sub-section (4) of Sec. 68, or in respect of which the payment of a betterment contribution has been accepted in pursuance of sub-section (3) of Sec. 70, or in respect of which an agreement for such payment has been executed under Sec. 72 be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under Sec. 6 of the Land Acquisition Act, 1894.

114. No suit or other legal proceeding shall lie against the Trust, or any trustee, or any officer or servant of the Trust, or any person acting under the direction of the Trust or of the Chairman or any officer or servant of the Trust for anything in good faith done or intended to be done under this Act.

Validation

118. (1) No act done or proceedings taken under this Act shall be questioned on the ground merely of—

- (a) the existence of any vacancy in, or any defect in the constitution of the Trust or any committee ; or
- (b) any person having ceased to be a Trustee ; or
- (c) any Trustee, or any person associated with the Trust under Sec. 17 or any other member of a committee having voted or taken any part in any proceeding in contravention of Sec. 20 ; or
- (d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure ; or
- (e) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Trust, the minutes of the proceedings of which have been duly signed as prescribed in clause (g) of sub-section (1) of Sec.

16, shall be taken to have been duly convened and to be free from all defects and irregularity.

Compensation

119. In any case not otherwise expressly provided for in this Act, the Trust may pay reasonable compensation to any person who sustains damage or loss by reason of the exercise of any of the powers vested under this Act in the Trust or the Chairman or any officer or any servant of the Trust.

120. (1) If, on account of any act or omission, any person has been convicted of an offence under this Act, and by reason of such act or omission damage has been caused to any property of the Trust, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for such offence.

(2) In the event of dispute, the amount of compensation payable by a person under sub-section (1) shall be determined by the Magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate, as if it were a fine inflicted by him on the person liable therefore.

Dissolution of Trust

121. (1) When all schemes sanctioned under this Act have been executed, or have been so far executed as to render the continuance of the Trust, in the opinion of the State Government, unnecessary, the State Government may by notification declare that the Trust shall be dissolved from such date as may be specified in this behalf in such notification ; and the Trust shall be deemed to be dissolved accordingly.

(2) From the said date—

(a) all properties, funds and dues which are vested in or realizable by the Trust shall vest in and be realizable by the Municipal Committee :

Provided that the State Government may resume the management of any street, square, parks open space or other land, vested in the Trust under sub-section (1) of Sec. 45 ; and

(b) all liabilities which are enforceable against the Trust shall be enforceable only against the Municipal Committee ; and

(c) for the purpose of completing the execution of any scheme, sanctioned under this Act, which has not been fully executed by the Trust, and of realizing properties, funds and dues referred to in clause (a), the functions of the Trust under this Act shall be discharged by the Municipal Committee respectively ; and

(d) the Municipal Committee shall keep separate accounts of all moneys respectively received and expended by it under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (b) have been duly met.

122. The provisions of the Central Provinces Tenancy Act, 1920, shall not apply to the land acquired or purchased by the Trust for its purposes.

M. P. (5)

NAGPUR IMPROVEMENT TRUST TRIBUNAL (VALIDATION OF PROCEEDINGS) ACT, 1948(C. P. AND BERAR ACT, No. XI OF 1948)¹

(Received the assent of the Government on the 29th March, 1948 ; assent first published in the Central Provinces and Berar Gazette on the 2nd April, 1948).

An act to validate the proceedings taken on acts done under the Nagpur Improvement Trust Act, 1936, by or before the Tribunal and the President of the Tribunal

WHEREAS it is expedient to validate the proceedings taken and acts done under the Nagpur Improvement Trust Act, 1936, by or before the Tribunal and the President of the Tribunal ;

It is hereby enacted as follows :

1. This Act may be cited as the Nagpur Improvement Trust Tribunal (Validation of Proceedings) Act, 1948.

2. No orders and awards made; petitions, applications and written statements received, evidence, oral or documentary, admitted and acted upon, proceedings taken and other acts and things done, by or before the Tribunal purporting to act as the Tribunal, or by or before the President of the Tribunal purporting to act as the President of the Tribunal, during the period from the 19th February to the 19th December, 1947, both days inclusive, shall be invalid or shall be deemed ever to have been invalid by reason only of the fact that any of the assessors or the President of the Tribunal had not, at any time during the aforesaid period, been duly appointed in accordance with the provisions of Sec. 62 of the Nagpur Improvement Trust Act, 1936.

3. The Nagpur Improvement Trust Tribunal (Validation of Proceedings) Ordinance, 1948, is hereby repealed.

¹ For Statement of Objects and Reasons, see *Central Provinces and Berar Gazette*, dated 27th February 1948, Part II page 49. For Proceedings in Assembly, see *Central Provinces and Berar Legislative Assembly Proceedings*, in 1948, Vol. V, pages 35-36 of No. 4, dated the 4th March, 1948.

M. P. (6)

**CENTRAL PROVINCES AND BERAR RESETTLEMENT AND
REHABILITATION OF DISPLACED PERSONS
(LAND ACQUISITION) ACT 1949**

C. P. AND BERAR ACT No. XX OF 1949)²

*(Received the assent of the Governor on the 16th April, 1949 ; assent first
published in the Central Provinces and Berar Gazette
on the 22nd April, 1949)*

An Act to make provision for the speedy acquisition of land for the resettlement and rehabilitation of displaced persons.

WHEREAS; it is expedient to make provision for the speedy acquisition of land for the resettlement and rehabilitation of displaced persons ;

1. (1) This Act may be cited as the Central Provinces and Berar Resettlement and Rehabilitation of Displaced Persons (Land Acquisition) Act, 1949.

(2) It extends to the whole of Madhya Pradesh.

2. In this Act, unless there is anything repugnant in the subject or context,—

“Displaced person” means person who, on account of the setting-up of the Dominions of India and Pakistan, or on account of civil disturbances or fear of such disturbances in any area now forming part of Pakistan, has been displaced from or has left his place of residence in such area after the 1st day of March, 1947, and who has subsequently been residing in India.

3. The State Government may, where it considers it necessary or expedient to acquire speedily and land for the resettlement and rehabilitation of displaced persons, acquire such land and the provisions of the Land Acquisition Act, 1894, as modified by the provisions contained in the Schedule shall apply to such acquisition.

4. Subject to such rules as may be made by the State Government, the Deputy Commissioner may use or deal with any land acquired under the provisions of this Act in such manner and subject to such conditions as may appear to him to be expedient for the purpose of resettling displaced persons :

Provided that no displaced person to whom any land has been allotted under the provisions of this section shall transfer such land to any other person except with the previous consent of the Deputy Commissioner given in writing by a general or special order.

² For Statement of Objects and Reasons see *Central Provinces and Berar Gazette, Extraordinary*, 1949, page 145, for discussion, see *Central Provinces and Berar Legislative Assembly Proceedings*, 1949, Vol. VII, pages 37-48, dated the 28th March, 1949.

5. The State Government may make rules to carry out the objects of this Act and for the guidance of officers in all matters connected with its enforcement.

THE SCHEDULE

(See Section 3)

Modifications in the Land Acquisition Act, 1894

1. For clause (f) of sec. 3, the following clause shall be deemed to be substituted, namely,—

“(f) the expression ‘public purpose’ includes the provisions of land for agriculture or for residential, business or industrial purposes, or for any purpose incidental to any of these with a view to resettlement and rehabilitation of displaced persons” ;

2. In Sec. 17—

(i) in sub-section (1) the words “waste or arable” shall be deemed to have been omitted ; and

(ii) the following proviso shall be deemed to have been added to the said sub-section, namely,—

“Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours’ notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.”

M. P. (7)

CITY OF NAGPUR CORPORATION ACT, 1948

(C. P. AND BERAR ACT 2 OF 1950)

(Extracts)

CHAPTER VI

Municipal Property and Liabilities

65. All property movable and immovable and all interest of whatsoever nature or kind therein, vested in the Civil Station Sub-Committee, Nagpur, and the City Municipal Committee, Nagpur, at the commencement of this Act, with all rights of whatsoever description used, enjoyed or possessed by the said Committees shall be deemed to be vested in the Corporation as constituted under this Act.

66. (1) All property, endowments and funds belonging to any public institution with the management, control, and administration of which the Corporation is charged under the provisions of this Act or of any other

enactment for the time being in force, shall vest in the Corporation in trust for the purposes to which such property, endowments and funds may lawfully be applied.

(2) The Corporation may with the sanction of the State Government, transfer to Government any property, endowments and funds so vested in it in Trust under sub-section (1) :

Provided that no trusts of public rights subject to which such property, endowments and funds are held shall be affected by such transfer.

67. (1) Whenever it is provided by this Act that the Chief Executive Officer may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Chief Executive Officer shall acquire, any immovable property, such property may be acquired by the Chief Executive Officer on behalf of the Corporation by agreement on such terms and at such rates or prices, or at rates or prices not exceeding such maxima, as shall be approved by the Standing Committee, either generally for any class of cases or specially in any particular case.

(2) Whenever under any provision of this Act the Chief Executive Officer is authorized to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do so on such terms, and at such rates or prices or at rates or prices not exceeding such maxima, as shall have been approved by the Standing Committee :

Provided that no agreement for the acquisition of any immovable property under sub-section (1) or (2) at a price exceeding one thousand rupees shall be valid until such agreement has been approved by the Corporation.

(3) The Chief Executive Officer may, on behalf of the Corporation, acquire by agreement any easement affecting any immovable property vested in the Corporation, and the provisions of sub-sections (1) and (2) shall apply to such acquisition.

68. (1) Whenever the Chief Executive Officer is unable under Sec. 67 to acquire by agreement any immovable property or any easement affecting any immovable property vested in the Corporation, or whenever any immovable property or any easement affecting any immovable property vested in the Corporation is required for the purposes of this Act, the State Government may, in its discretion, upon the application of the Chief Executive Officer made with the approval of the Standing Committee, order proceedings to be taken for acquiring the same on behalf of the Corporation as if such property or easement were land needed for a public purpose within the meaning of the land Acquisition Act, 1894.

(2) The amount of the compensation awarded and all other charges incurred in the acquisition of any such property or easement shall, subject to all other provisions of this Act, be forthwith paid by the Chief Executive Officer and thereupon the said property or easement shall vest in the Corporation.

(3) When any land is required for a new street or for the improvement of an existing street, the Corporation may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings to be erected on both sides of the street, and such land shall be deemed to be required for the purposes of this Act.

69. (1) Where any immovable property or any right in or over any such property is claimed by or on behalf of the Corporation, or by any person as against the Corporation, it shall be lawful for the Deputy Commissioner of Nagpur after formal enquiry, of which due notice has been given, to pass an order deciding the claim.

(2) The Corporation or any person aggrieved by an order passed by the Deputy Commissioner of Nagpur under sub-section (1) may, notwithstanding anything contained in any law for the time being in force, within one year from the date on which the Corporation or such person had due notice of such order, institute a suit in any competent Civil Court to set aside such order to claim a relief consistent therewith.

(3) If any such suit is instituted after the expiration of one year from the date on which the notice of such order has been given, such suit shall be dismissed although limitation has not been set up as a defence.

(4) The Deputy Commissioner of Nagpur may, by general or special order, delegate the powers conferred on him under this section to an Assistant Commissioner or an extra-Assistant Commissioner subordinate to him.

(5) The formal enquiry referred to in this section shall be conducted in accordance with the provisions of the Central Provinces Land Revenue Act, 1917.

(6) A person shall be deemed to have had due notice of an enquiry or order under this section or notice thereof has been given in accordance with the provisions of the Central Provinces Land Revenue Act, 1917.

70. (1) No nazul lands, streets, public places, drains or irrigation channels shall be sold, leased or otherwise alienated, save in accordance with such rules as the State Government may make in this behalf.

(2) Subject to the provisions of sub-section (1),—

(a) the Chief Executive Officer may, in his discretion, grant a lease of any immovable property belonging to the Corporation including any right of fishing or of gathering and taking fruit, flowers and the like, of which the premium or rent, or both, as the case may be, does not exceed five hundred rupees for any period not exceeding twelve months at a time :

Provided that every such lease granted by the Chief Executive Officer, other than a lease of a class in respect of which the Standing Committee has by resolution exempted the Chief Executive Officer from compliance with the requirements of this proviso, shall be reported by him to the Standing Committee within fifteen days after the same has been granted ;

(b) with the sanction of the Standing Committee, the Chief Executive Officer may dispose of by sale or otherwise, any such right as afore-said, for any period not exceeding three years at a time of which the premium or rent, or both, as the case may be, for any one year does not exceed three thousand rupees ;

(c) with the sanction of the Corporation, the Chief Executive Officer may lease, sell or otherwise convey any immovable property belonging to the Corporation.

(3) The Chief Executive Officer may,—

- (a) in his discretion, dispose of by sale or otherwise, any movable property belonging to the Corporation not exceeding five hundred rupees in value ;
- (b) with the sanction of the Standing Committee, dispose of by sale or otherwise any movable property belonging to the Corporation ;
- (c) with the sanction of the Corporation, sell or otherwise convey any movable property belonging to the Corporation.

(4) The sanction of the Standing Committee or of the Corporation under sub-section (2) or sub-section (3) may be given either generally for any class of cases or specifically in any particular case.

(5) The foregoing provisions of the section shall apply to every disposal of property belonging to the Corporation made under, or for the purposes of, this Act :

Provided that—

- (i) no property vesting in the Corporation in a trust shall be leased, sold or otherwise conveyed in a manner that is likely to affect the trust subject to which such property is held ;
- (ii) no land exceeding ten thousand rupees in value shall be sold, leased or otherwise conveyed without the previous sanction of the State Government and every sale, lease or other conveyance of property vesting in the Corporation shall be deemed to be subject to the conditions and limitations imposed by this Act or by any other enactment for the time being in force.

71. (1) The nazul lands transferred to the Corporation by the State Government shall be managed in accordance with the by-laws made by the Corporation with the previous approval of the State Government.

(2) The Corporation may, with the previous approval of the State Government, from time to time, add to, vary or rescind the by-laws made under sub-section (1).

72. The Corporation may, with the previous sanction of, and on such terms as may be approved by, the State Government, undertake to supply water to any area outside the city from the water works maintained by the Corporation and do other acts ancillary thereto.

73. Subject to any special reservation made or to any special conditions imposed by the State Government, all property of the nature hereinafter in the section specified and situated within the city, shall vest in and be under the control of the Corporation, and with all other property which has already vested, or may hereafter vest in the Corporation, shall be held and applied by it for the purposes of this Act, that is to say,—

- (a) all public town-walls, gates, markets, slaughter-houses, manure and night-soil depots and public buildings of every description, which have been constructed or are maintained out of the municipal fund ;
- (b) all public streams, springs and works for the supply, storage and distribution of water for public purposes, and all bridges, buildings, engines, materials and things connected therewith, or appertaining

thereto, and also any adjacent land (not being private property) appertaining to any public tank or well ;

- (c) all public sewers and drains, and all sewers, drains, culverts and watercourses in or under any public street, or constructed by or for the Corporation alongside any public street, and all works, materials and things appertaining thereto ;
- (d) all dust, dirt, dung, ashes, refuse, animal matter, or filth or rubbish of any kind, or dead bodies of animals collected by the Corporation from the streets, houses, privies sewers, cesspools or elsewhere or deposited in places fixed by the Corporation ;
- (e) all public lamps, lamp-posts and apparatus connected therewith or appertaining thereto ;
- (f) all land or other property transferred to the Corporation by the Government or acquired by gift, purchase or otherwise for local public purposes ;
- (g) all public streets, not being land owned by the Government and the pavements, stone and other materials thereof and also trees growing on, and erections, materials, implements and things provided for such streets.

74. The Corporation shall maintain a register and a map of all immovable property of which it is the proprietor or which vests in it otherwise or which it holds in trust for the State Government.

75. The State Government may resume any immovable property transferred to the Corporation by itself or by any local authority, where such property is required for a public purpose, without payment of any compensation other than the amount paid by the Corporation for such transfer and the market value at the date of resumption of any buildings or works subsequently erected or executed thereon by the Corporation with the intention that such buildings or works should be permanent :

Provided that compensation need not be paid for buildings or works constructed or erected in contravention of the terms of the transfer.

76. (1) The management, control and administration of every public institution maintained out of the municipal fund shall vest in the Corporation.

(2) When any public institution has been placed under the direction, management and control of the Corporation, all property endowments and funds belonging thereto shall be held by the Corporation in Trust for the purposes to which such property, endowments and funds were lawfully applicable at the time when the institution was so placed :

Provided that the extent of the independent authority of the Corporation in respect of any such institution may be prescribed by the State Government :

Provided also that nothing in this section shall be held to prevent the vesting of any trust property in the Treasurer of Charitable Endowments, under the Charitable Endowments Act, 1890.

PART VI—LANDS, BUILDINGS AND STREETS

Chapter XXIII—Town Planning

271. (1) The Corporation may, and if so required by the State Government shall, within six months of the date of such requisition, direct the Chief Executive Officer to draw up a town planning scheme, which may, among other things, provide for the following matters, namely,—

- (a) a direction that in any street, portion of a street locality specified in the scheme, the elevation and construction of the frontage of all buildings thereafter erected or re-erected shall, in respect of their architectural features, be such as may be fixed for the locality ;
- (b) a direction that in any street, portion of a street or locality specified in the scheme, there shall be allowed the construction of only detached or semi-detached buildings or both, and that the land appurtenant to each building shall be of an area not less than that specified in the scheme ;
- (c) a direction that in any street portion of a street or a locality specified in the scheme, the construction of more than a specified number of houses on each acre of land shall not be allowed ;
- (d) a direction that in any street, portion of a street or locality specified in the scheme, the construction of shops, warehouses, factories, huts or buildings of a specified architectural character or buildings designed for particular purposes shall not be allowed ;
- (e) a street line and a building line on either side or on both sides of any street existing or proposed ;
- (f) a standard plan, either for the division of land into building sites, or for the location of buildings within a building site ;
- (g) the amount of land which shall be transferred to the Corporation for public purposes and public streets by owners of land on payment of compensation ;
- (h) the prohibition of building operations permanently or temporarily when by reason of the situation or nature of the land, the erection of buildings thereon would be like to involve danger or injury to health, or excessive expenditure of public money in the provision of roads, sewers, water-supply or other public services ;
- (i) regulating, in the interest of safety, the height and position of proposed walls, fences or hedges near the corners or bends of streets ;
- (j) limiting the number or prescribing the sites of new roads entering a highway maintained by the State Government ;
- (k) regulating, in respect of the erection of any building intended to be used for purposes of business or industry, the provision of accommodation for loading, unloading or fuelling vehicles with a view to the prevention of obstruction of traffic on any highway ; and
- (l) a direction that in any street, portion of a street or locality specified in the scheme, the use of land for any purposes even though not

involving the erection of buildings, shall not be inconsistent with the provisions of this section with respect to buildings.

(2) When a scheme has been drawn up under the provisions of sub-section (1), the Chief Executive Officer shall give public notice of the scheme and shall therein announce a date not less than thirty days from the date of such notice by which any person may submit to the Chief Executive Officer in writing any objection or suggestion with regard to the scheme which he may wish to make.

(3) The Chief Executive Officer shall, within fifteen days of the date announced under the provisions of sub-section (2), forward to the Standing Committee the notice together with the objections or suggestions, if any, and his opinion on the scheme.

(4) The Standing Committee shall, within fifteen days of the receipt of the documents relating to the scheme, forward them to the Corporation together with the opinion of the Executive Officer and any comments which the Standing Committee may make.

(5) The Corporation shall consider every objection or suggestion with regard to the scheme and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up, or as modified, together with the documents mentioned in sub-section (4), to the State Government which may sanction the scheme with such modifications as it may think fit or may refuse to sanction it, or may return it to the Corporation for reconsideration and re-submission by a specified date.

(6) If the Corporation fails to submit a scheme within six months of being required to do so under sub-section (1), or fails to re-submit a scheme by a specified date when required to do so under sub-section (5), or re-submits a scheme which is not approved by the State Government, the State Government may draw up a scheme which shall be published within the limits of the Corporation together with an intimation of the date by which any person may submit in writing to the State Government any objection or suggestion which he may wish to make. The State Government may sanction such scheme as originally published or modified in consequence of any such objection or suggestion as the State Government may think fit.

(7) The cost of such scheme, or such portion of the cost as the State Government may deem fit, shall be defrayed from the municipal fund.

(8) When sanctioning a scheme the State Government may impose conditions for the submission of periodical reports on the progress of the scheme to the State Government, and for the inspection and supervision of the scheme by the State Government.

(9) No person shall erect or re-erect any building or take any other action in contravention of any such scheme or of any rule or by-law made under the provisions of this Act.

272. Notwithstanding anything contained in Sec. 271, the Corporation shall not, except when required so to do by the State Government, undertake any scheme of town-planning so long as the Nagpur Improvement Trust continues to subsist and function.

M. P. (8)

MADHYA PRADESH HOUSING BOARD ACT, 1950

(No. XLIII of 1950)

(Extracts)

(Received the assent of the Governor on the 10th November, 1950, assent first published in the Madhya Pradesh Gazette, Extraordinary, on the 20th November, 1950).

An Act to provide measures to be taken to deal with and satisfy the need of ¹[Housing Accommodation]

WHEREAS it is expedient to take measures, to make schemes and to carry out works as may be necessary for the purpose of dealing with and satisfying the need of housing accommodation ¹[* * *] and with that object in view it is necessary to establish a Board and to make certain other provisions hereinafter appearing ;

It is hereby enacted as follows :

* * * *

CHAPTER III**Acquisition and Disposal of Lands**

25. (1) The Board may enter into an agreement with any person for the acquisition from him by purchase, lease or exchange, of any land which is needed for the purposes of a housing scheme or any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith.

(2) The Board may also take steps for the compulsory acquisition of any land or any interest therein required for the execution of a housing scheme in the manner provided in the Land Acquisition Act, 1894, and the acquisition of any land or any interest thereto for the purposes of this Act shall be deemed to be acquisitioned for a public purpose within the meaning of the Land Acquisition Act, 1894.

* * * *

27. Subject to any rules made by the State Government under this Act, the Board may retain, lease, sell, exchange or otherwise dispose of any land, building or other property vesting in it and situate in the area comprised in any housing scheme sanctioned under this Act.

¹ Amended by M. P. Act XIII of 1955.

M. P. (9)

**MADHYA PRADESH ABOLITION OF PROPRIETARY RIGHTS
(ESTATES, MAHALS, ALIENATED LANDS)
ACT No. 1 OF 1950**

[Received the assent of the President on the 22nd January, 1951 ; assent first published in the Madhya Pradesh Gazette Extraordinary, on the 26th January, 1951].

An Act to provide for the acquisition of the rights of Proprietors in estates, mahals, alienated villages and alienated lands in Madhya Pradesh and to make provision for other matters connected therewith.

Preamble

Whereas it is expedient to provide for the acquisition of the rights of proprietors in estates, mahals, alienated villages and alienated lands in Madhya Pradesh and to make provision for other matters connected therewith ;

It is hereby enacted as follows :—

CHAPTER I

Preliminary

Short title and extent

1. (1) This Act may be cited as Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals Alienated Lands), Act, 1950.

(2) It extends to the whole of Madhya Pradesh.

CHAPTER II

The Vesting of Proprietary Rights in the State

3. (1) Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the area specified in the notification, vesting in a proprietor of such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free of all encumbrances.

(2) After the issue of a notification under sub-section (1), no right shall be acquired in or over the land to which the said notification relates, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State ; and no fresh clearings for cultivation or for any

other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.

(3) Different dates may be specified under sub-section (1) for different areas.

(4) The State Government may vary the date specified under sub-section (1) at any time before such date.

Consequences of the vesting

4. (1) When the notification under section 3 in respect of any area has been published in the Gazette, then notwithstanding anything in any contract, grant or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting), ensue, namely :—

- (a) all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grass land, scrub jungle, forest, trees, fisheries, wells, tanks, ponds, water-channels, ferries, pathways, village sites, *hats*, bazars and *melas* ; and in all sub-soil, including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the State for purposes of the State free of all encumbrances ; and the mortgage debt or charge on any proprietary right shall be a charge on the amount of compensation payable for such proprietary right to the proprietor under the provisions of this Act ;
- (b) all grants and confirmation of title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof shall, whether liable to resumption or not, determine ;
- (c) all rents and cesses, in respect of any holding in the property so vesting for any period after the date of vesting, and which, but for such vesting, would be payable to the proprietor, shall vest in and be payable to the State Government, and any payment made in contravention of this clause shall not be a valid discharge of the person liable to pay the same ;
- (d) all arrears of revenue, cesses or other dues, in respect of any property so vesting, and due by the proprietor for any period prior to the date of vesting, shall continue to be recoverable from such proprietor and may, without prejudice to any other mode of recovery, be realised by deducting the amount from the compensation money payable to such proprietor under Chapter V ;
- (e) the interest of the proprietor so acquired shall not be liable to attachment or sale in execution of any decree or other process of any court, civil or revenue, and any attachment existing at the date of vesting or any order for attachment passed before such date

shall, subject to the provisions of section 73 of the Transfer of Property Act, 1882, cease to be in force ;

(f) every mortgage with possession existing on the property so vesting or part thereof on the date immediately preceding the date of vesting shall, to the extent of preceding the date of vesting shall, to the extent of the amount secured on such property or part, be deemed, without prejudice to the rights of the State Government under section 3, to have been substituted by a simple mortgage.

(2) Notwithstanding anything contained in sub-section (1), the proprietor shall continue to retain the possession of his homestead, home, farm land, and in the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting.

(3) Nothing contained in sub-section (1) shall operate as bar to the recovery by the outgoing proprietor of any sum which becomes due to him before the date of vesting by virtue of his proprietary rights and any such sum shall be recoverable by him by any process of law which but for this Act would be available to him.

Deputy Commissioner to take possession of property vesting in the State

7. On the date of vesting, the Deputy Commissioner shall take charge of lands, other than occupied lands and homestead, and of all interests vesting in the State under section 3.

CHAPTER III

Assessment of Compensation

Duty to pay compensation and interest and manner of payments

8. (1) The State Government shall pay to every proprietor, who is divested of proprietary rights, compensation determined in accordance with the rules contained in Schedule I.

(2) In addition to the compensation payable under sub-section (1) the State Government shall pay to the proprietor any amount which he proves to the satisfaction of the Compensation Officer appointed under section 11 to have spent after the 11th March, 1949, on any tank, well or any other work used for irrigating agricultural land where such tank, well or work vests in the State Government by virtue of this Act.

(3) In addition to the amount payable under sub-section (1), the State Government shall in the case of lands lying within the area of any municipality or cantonment and vesting in the State under this Act, pay to the proprietor compensation calculated in accordance with the rules contained in Schedule II.

(4) The compensation for divesting of proprietary rights shall be due as from the date of vesting and shall carry interest at the rate of two and a half per centum per annum from the date of vesting to the date of payment.

Submission of statement of claim by proprietor

12. (1) Every proprietor who is divested of proprietary rights by virtue of a notification issued under section 3 shall, within such period as may be prescribed, file a statement of claim in the prescribed form and specify therein the following particulars, namely :—

- (i) name of the outgoing proprietor ;
- (ii) the extent of share of each proprietor where there are more proprietors than one ;
- (iii) the amount of gross income and expenditure and profits from various sources referred to in Schedule I ;
- (iv) details of any leases entered into in regard to any land forest or fisheries together with the names of lessees ;
- (v) such other particulars as may be prescribed.

Every such statement shall be signed and verified in accordance with Order VI, rule 15 of the Code of Civil Procedure, 1908.

Determination of compensation

13. (1) On receipt of the statement of claim, or if no such claim is received within the prescribed period, the Compensation Officer shall, after making such enquiry as he thinks fit and giving an opportunity to the claimant to be heard, decide the amount of compensation due to the claimant and record in a statement in the prescribed form, the details of the land which shall vest in the State Government after its acquisition in lieu of the payment of such compensation and such other details as may be prescribed.

The Compensation Officer shall assess the amount of compensation payable for the whole estate, mahal or alienated village as one unit and shall then determine the amount due to each claimant in accordance with sub-section (3), (4) and (5).

(3) Where there are co-sharers, the amount of compensation shall be distributed between them in proportion to the shares held by them.

(4) Where in the Central Provinces, superior and inferior proprietary rights exist in the same estate or mahal, or alienated village, the Compensation Officer shall distribute the compensation in the proportion in which proprietary profits are shared by them immediately before the date of vesting.

(5) Where in the Central Provinces and the merged territories, in an estate or mahal, proprietary rights are held by under-tenures, such as a protected thekadar or other thekadar or a protected headman, the Compensation Officer shall apportion the total amount of compensation between the various claimants having regard to—

- (a) the premium, if any, paid at the commencement of the theka or the lease ;
- (b) the terms and conditions of the theka or the under-tenure ;
- (c) loss, if any, caused to the thekadar as a result of the determination of the theka ;

- (d) the gross assets and the net assets of the estate or mahal under the theka or under-tenure ;
 - (e) the amount payable annually by the thekadar ;
 - (f) the fact that the total rights of the intermediary are being acquired and that those rights were held by him in perpetuity while the rights of the thekadar are of a limited character ; and
 - (g) such other matters as may be prescribed.
- (6) A copy of the statement recorded by the Compensation Officer under sub-section (1) shall be supplied to each proprietor affected by the acquisition.

SCHEDULE I

[See section 8 (1)]

Rules for the determination of compensation

1. In these rules the expression "previous agricultural year" means the agricultural year preceding the agricultural year in which the date of vesting falls.

2. (1) The gross income of an estate or mahal in the Central Provinces shall be calculated by adding the amount of income received by a proprietor under the following heads, namely :—

- (a) the aggregate of the rents receivable from tenants in an estate or mahal as recorded in the *Jamabandi* for the previous agricultural year ;
- (b) *siwai* income that is income from various sources such as *jalkar*, *bankar*, *phalkar*, *hats*, bazars, melas, grazing and village forest calculated at two times the *siwai* income recorded in the current settlement ;
- (c) consent money on transfer of tenancy lands—the average annual income calculated at the rate permissible under section 6-A or section 12-A, as the case may be, of the Central Provinces Tenancy Act, 1920, on transactions recorded in the village papers for ten years preceding the agricultural year in which the date of vesting falls.

(2) The net income of an estate or mahal in the Central Provinces shall be calculated by deducting from the gross income the sums under the following heads, namely :—

- (a) the sum assessed as land revenue on an estate or mahal in the previous agricultural year less that part of the rental value of the home-farm land which bears the same proportion to the rental value as the amount of land revenue assessed on the estate or mahal bears to the malguzari assets ;
- (b) sums found payable during the previous agricultural year by a proprietor on account of cesses and local rates on all lands in the estate or mahal other than lands comprised in his home-farm ;

- (c) the average of the income-tax paid in respect of the income received from big forest during the period of thirty agricultural year in which the relevant date falls ;
 - (d) cost of management at the rate of—
 - (i) eight per cent in the case of gross annual income not exceeding rupees two thousand in respect of mahals ;
 - (ii) ten per cent in the case of gross annual income exceeding rupees two thousand in respect of mahals ;
 - (iii) ten per cent in the case of gross annual income exceeding rupees two thousand but not exceeding rupees fifteen thousand in respect of estates ;
 - (iv) fifteen per cent in the case of gross annual income exceeding rupees fifteen thousand in respect of estates.
- (3) Notwithstanding anything contained in sub-rule (2) the net income shall in no case be reduced to less than five per cent of the gross income.
3. The gross annual income of an alienated village or alienated land in Berar shall, except in respect of item (a) below, be determined by taking the average of the income derived from such village during the ten agricultural years immediately preceding the agricultural year in which the date of vesting falls from the following sources :—
- (a) the aggregate of rents payable by tenants for lands other than home-farm land for the agricultural year preceding the agricultural year in which the date of vesting falls ;
 - (b) income derived from village sites, grazing land and village forest ; and
 - (c) any other sources from which the superior holder legally derives income in exercise of his right as such.
4. (1) The net annual income of an alienated village or alienated land shall be ascertained by deducting from the gross annual income following sums, namely :—
- (a) any sum which was assessed in the agricultural year in which the date of vesting falls on account of the land revenue in respect of lands other than home-farm lands ;
 - (b) cesses or local rates and *jagalia* or *mahar* cess payable by the superior holder in respect of all lands other than home-farm land ;
 - (c) annual emoluments payable to patels and patwaris ;
 - (d) one-tenth of the amount which may have been paid as income-tax on account of income from village forest during the ten agricultural years immediately preceding the agricultural year in which the date of vesting falls ;
 - (e) cost of management at the rate of—
 - (i) eight per cent in the case of gross annual income not exceeding rupees two thousand ;
 - (ii) ten per cent in the case of gross annual income exceeding rupees two thousand ;
 - (iii) fifteen per cent in the case of gross annual income exceeding rupees fifteen thousand.

(2) Notwithstanding anything contained in sub-rule (1) the net income shall in no case be reduced to less than five per cent of the gross income.

5. In the case of a village in the Central Provinces where mining rights vest in the proprietor under the Waste Lands Sales Rules, 1864, to the net income determined under rule 2, shall be added the net income from mining rights calculated in accordance with rule 6.

6. (1) Where a mine has been worked at any time during the ten agricultural years in which the relevant date falls—

(a) the gross income in respect of any such mine shall be calculated as follows :—

(i) in the case of a proprietor in receipt of royalties on account of mines and minerals comprised in his mahal the average income on account of royalties calculated on the basis of the annual returns filed by the proprietor for the assessment of cess or income-tax during the period of ten agricultural years preceding the agricultural year in which the date of vesting falls or any shorter period for which such returns have been filed ;

(ii) in the case of a proprietor directly working a mine comprised in his mahal the average annual gross income from such mine calculated on the same basis as that specified in paragraph (i) ;

(b) the net income shall be arrived at by deducting from the gross income, the following, namely :—

(i) the average of the income-tax paid in respect of the income from royalties mentioned in paragraph (i) of clause (a) , computed over the period mentioned in the said paragraph and the cost of collection of such rates as may be prescribed ;

(ii) 95 per centum of the gross income determined under paragraph (ii) of clause (a) which shall be deemed to be part of the income reserved to him in respect of the rights contained in section 72.

(2) If the net income arrived at in accordance with sub-rule (1) is less than the amount calculated at a rate of four annas per acre of the area in which the mining right exists, the net income of the proprietor shall be deemed to be the amount which is greater.

(3) In the case of mining rights not covered by sub-rule (1) the net income shall be deemed to be equal to a sum calculated at four annas per acre of the area in which the mining right exists.

7. (1) In the merged territories, the gross assets of an estate or mahal shall be calculated by adding the amount of income received by a proprietor under the following heads, namely :—

(a) the aggregate of the assessments on all lands in the estate or mahal other than home-farm lands ;

(b) *siwai* income, i. e., income from various sources such as *jalkar*, *bankar*, *phalkar*, *hats*, bazars, grazing income from village forest, etc., calculated at two times the *siwai* income recorded in the current settlement and if there was no such settlement in any area, then the average annual income based on the average income from all sources, from which such income could be legally derived,

for the three years immediately preceding the agricultural year in which the date of vesting falls :

- (c) consent money on transfer of tenancy and raiyati lands—the average annual income calculated at the rate permissible under section 5 of the Central Provinces State Land Tenure Order, 1949, or the Makrai State Land Tenure Order, 1949, on transactions recorded in the village papers for three years or if no such village papers are maintained in any area, on transactions taking place during the three years immediately preceding the agricultural year in which the date of vesting falls.

(2) The net annual income of an estate or mahal in the merged territories shall be calculated by deducting from the gross income the sums under the following heads, namely :—

- (a) the sum assessed as land revenue on the estate or mahal in the previous agricultural year less the assessments on the home-farm lands or where only a fraction of the sum assessed as land revenue on the estate or mahal in the previous agricultural year less proportionate fraction of the assessment on the home-farm land ;
- (b) sums found payable during the previous agricultural year by a proprietor on account of the cesses and local rates on lands in the estate or mahal other than lands comprised in the home-farm ;
- (c) any expenditure which the proprietor is liable to incur on any duties imposed upon him as a proprietor under any instrument having the force of law in the local area ;
- (d) cost of management at the rate of—
 - (i) eight per cent in the case of gross annual income not exceeding rupees two thousand in respect of mahals ;
 - (ii) ten per cent in the case of gross annual income exceeding rupees two thousand in respect of mahals ;
 - (iii) ten per cent in the case of gross annual income exceeding rupees two thousand but not exceeding rupees fifteen thousand in respect of estates ;
 - (iv) fifteen per cent in the case of gross annual income exceeding rupees fifteen thousand in respect of estates.

(3) Notwithstanding anything contained in sub-rule (2), the net income shall in no case be reduced to less than five per cent of the gross income.

8. (1) The amount of compensation in the Central Provinces and in Berar shall be ten times the net income determined in accordance with the rules herein contained.

(2) The amount of compensation in the merged territories shall be—

- (a) in the case of any proprietor other than a thekadar, gaontia or headman such multiple of the net annual income as may be applicable in accordance with the table below ;
- (b) in the case of a thekadar, gaontia or headman who is entitled as of right to have his *theka* renewed, one-half of the amount that would be payable in accordance with the said table ; and

- (c) in the case of a thekadar, gaontia or headman to whom clause (b) does not apply, an amount equal to the net annual income determined under rule 7.

TABLE

<i>Net annual income</i>	<i>Multiple</i>
(1) Where the net annual income does not exceed rupees five hundred a year.	Ten times the net annual income.
(2) Where the net annual income exceeds five hundred, but does not exceed one thousand.	Eight times the net annual income or rupees five thousand whichever is greater.
(3) Where the net annual income exceeds one thousand, but does not exceed two thousand.	Five times the net annual income or rupees eight thousand whichever is greater.
(4) Where the net annual income exceeds two thousand.	Two times the net annual income or rupees ten thousand whichever is greater.

MADHYA PRADESH (10)

THE CITY OF JUBBULPORE CORPORATION ACT, 1948 ;
ACT 3 OF 1950*(Extracts)*

293. Modification of the Land Acquisition of Act 1 of 1894 :—For the purpose of acquiring land under the Land Acquisition Act, 1894, for the Corporation—

- (a) the Tribunal shall, except for the purposes of section 54 of that Act, be deemed to be the Judge thereunder ;
- (b) the Act shall be subject to the further modifications as indicated in the First Schedule ;
- (c) the President of the Tribunal may summon witnesses and enforce their attendance and may compel the production of documents, by the same means, and so far as may be, in the same manner, as is provided in case of a Civil Court under the Code of Civil Procedure, 1908 ; and
- (d) the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be final.

THE FIRST SCHEDULE

(Referred to in section 293)

Further Notifications in the Land Acquisition Act, 1894

1. Notification under section 4 and declaration under section 6 to be replaced by notifications under sections 281 and 284 of this Act.

(1) The first publication of a notice of an improvement scheme under section 281 of the City of Jubbulpore Corporation Act, 1948, shall be substituted

for, and have the same effect as publication in the Official Gazette and in the locality, of a notification under sub-section (1) of section 4, except where a declaration under section 4 or section 6 has been made and is still in force.

(2) The publication of a notification under section 285 of the City of Jubbulpore Corporation Act, 1948 shall substituted for, and have the same effect as a declaration by the State Government under section 6 unless the declaration under the last mentioned section has previously been made is enforced.

2. Amendment of section 11 :—The full stop at end of section 11 shall be deemed to be changed to semi colon, and the followings shall be deemed to be added, and the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of section 23 as been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant.

3. Amendment of section 15 :—In section 15, for the word and figures "and 24," the figures, word, and letter "24 and 24A," preceded by comma, shall be deemed to be substituted.

4. Amendment of section 17 :—(1) In sub-section (3) of section 17, after the figures "24", the words, figures and letters "or Section 24-A" shall be deemed to be inserted.

(2) To section 17, the following shall be deemed to be added, namely,—

"(5) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

5. New section 17-A :—After section 17, the following section shall be deemed to be inserted, namely,—

"17-A. **Transfer of land to Corporation :—**In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Chief Executive Officer ; and the land shall thereupon vest in the Corporation subject to the liability of the Corporation to pay any further costs which may be incurred on account of its acquisition."

6. Amendment of section 18 :—The full stop at the end of sub-section (1) of section 18 shall be deemed to be changed to a comma, and the words "or the amount of the costs allowed" shall be deemed to be added.

7. Amendment of section 19 :—After the words "amount of compensation," in clause (c) of section 19, the words "and of costs (if any)" shall be deemed to be inserted.

8. Amendment of section 20 :—After the words "amount of the compensation," in clause (c) of section 20, the words "or costs" shall be deemed to be inserted.

9. Amendment of section 23 :—(1) In clause first of sub-section (1) of section 23, for the words and figures "publication of the notification under

section 4, sub-section (1)", the words and figures "first publication of the notification under sub-section (1) of section 281" shall be deemed to be substituted and in clause sixthly of sub-section (1) of section 23, for the words and figures "publication of the declaration under section 6", the words and figures "publication of the declaration under sub-section (1) of section 285" shall be deemed to be substituted.

(2) The full stop at the end of sub-section (2) of section 23 shall be deemed to be changed to a colon, and the following proviso shall be deemed to be added :

"Provided that this sub-section shall not apply to any land acquired under the City of Jubbulpore Corporation Act, 1948, except—

- (a) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and
- (b) gardens not let to tenants but used by the owners as a place of resort".

(3) At the end of section 23, the following shall be deemed to be added, namely,—

"(3) For the purposes of clause first of sub-section (1) of this section—

- (a) the market-value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause ;
- (b) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual expenditure may be paid to him ;
- (c) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded, unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;
- (d) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ;
- (e) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding ; and
- (f) when the owner of the land or building has after passing of the City of Jubbulpore Corporation Act, 1948, and within two years preceding the date with reference to which the market-

value is to be determined, made a return under section 131 of the said Act, of the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, and the market-value shall be determined on the basis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement."

10. Amendment of section 24 :—For clause seventhly of section 24, the following clause shall be deemed to be substituted, namely,—

"Seventhly, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any buildings in a proper state of repair."

11. New section 24-A :—After section 24, the following section shall be deemed to be inserted, namely,—

24-A. Further provision for determining compensation :—In determining the amount of compensation to be awarded for any land acquired for the Corporation under this Act, the Tribunal shall also have regard to the following provisions, namely,—

- (1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;
- (2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state ;
- (3) if, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building minus the cost of demolishing the building."

12. Amendment of section 31 :—(1) After the words "the compensation" in sub-section (1) of section 31, and after the words "the amount of the compensation" in sub-section (2) of the section, the words "and costs, if any," shall be deemed to be inserted.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of section 31, the words "or costs" shall be deemed to be inserted.

13. New section 48-A :—After section 48, the following section shall be deemed to be inserted, namely,—

“48-A. Compensation to be awarded when land not required within two years :—(1) If within a period of two years from the date of the publication of the declaration under section 285 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply so far as may be, to the determination of the compensation payable under this section.”

MADHYA PRADESH (11)

The Central Provinces and Berar Land Acquisition (Amendment) Act No. VII of 1949

(Extracts)

(Received assent of Governor on 19-3-49 and published in C. P. & Berar Gazette on 25-3-49).

2. In clause (d) of section 3 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), after the word “Court” the words “except in sub-section (3) of section 18” shall be inserted.

3. In section 18 of the said Act, after sub-section (2), the following sub-section shall be inserted ; namely,

“(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of section 115 of the Civil Procedure Code, 1908.”

MADHYA PRADESH (12)

THE CENTRAL PROVINCES AND BERAR LAND ACQUISITION (Second Amendment) ACT No. XXVIII of 1949

(Extracts)

Received assent of Governor on 29-4-49 Published in C. P. and Berar Gazette on 6-5-49. An Act further to amend the Land Acquisition Act 1894 in its application to C. P. and Berar

* * * *

2. In sub-section (2) of section 17 of the Land Acquisition Act 1894, after the words “any such Station”, the following words shall be inserted namely,—

“or whenever owing to a like emergency it becomes necessary for the State Government to acquire the immediate possession of any land for the purpose of maintaining traffic over a public road”.

MADHYA PRADESH (13)

**THE CENTRAL PROVINCES AND BERAR LAND ACQUISITION
(Amendment) Act No. XXVII of 1949**

(Extracts)

(Assent of Governor and published on 15-9-49.)

* * * *

2. In section 28 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), for the words "at the rate of six per centum per annum", the words "at a rate which shall not be less than three *per centum per annum* and more than six *per centum per annum*" shall be deemed to be substituted.

3. In section 34 of the said Act for the words "at the rate of six per centum per annum" the words "at a rate which shall not be less than three per centum per annum and more than six per centum per annum" shall be deemed to be substituted.

MADHYA PRADESH (14)

**THE LAND ACQUISITION (Madhya Pradesh Amendment) Act
No. 43 of 1965**

(Extracts)

(Received assent of the President on 11-12-65 and published in M. P. Gazette on 21-12-65).

* * * *

2. **Amendment of Section 3 :—**In clause (e) of section 3 of the Land Acquisition Act, 1894 (1 of 1894), the following clause shall be substituted namely,

"(e) the expression "Company" means a Company registered under the Indian Companies Act, 1882 (6 of 1882) or under the (English) Companies Act, 1862 to 1890, or incorporated by an Act of Parliament of the United Kingdom or by an Indian Law, or by Royal Charter or Letters Patent and includes a registered Society within the meaning of clause (b) of section 2 of the Madhya Pradesh Societies Registration Act, 1959 (1 of 1960), and a Society within the meaning of clause (z) of section 2 of the Madhya Pradesh Co-operative Societies Act, 1960 (17 of 1961)".

PART III

CHAPTER IX

MADRAS (Tamil Nadu) (1)

THE MADRAS CITY IMPROVEMENT TRUST ACT 1950 (Madras Act XXXVII of 1950)

(Extracts)

* * * *

73. Modification of the Land Acquisition Act, 1894 :—For the purpose of acquiring land for the Board under the Land Acquisition Act, 1894—

- (a) the said Act shall be subject to the modifications specified in the Schedule ; and
- (b) in case a Tribunal is constituted under section 74—
 - (i) the Tribunal shall (except for the purposes of section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge thereof ;
 - (ii) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as if provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and
 - (iii) the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be final.

* * * *

THE SCHEDULE

[Referred to in section 73(a)]

Further modifications in the Land Acquisition Act, 1894

1. After clause (ee) of section 3 of the Land Acquisition Act, 1894 (hereinafter in this schedule referred to as “the said Act”), the following clause shall be deemed to be inserted, namely,—

“(eee) the expression ‘local authority’ includes the Board of Trustees for the Improvement of the City of Madras, constituted under section 3 of the Madras City Improvement Trust Act, 1950”.

2. (1) The first publication of a notice of an improvement scheme under section 47 of the Madras City Improvement Trust Act, 1950, shall be substituted for and have the same effect as publication in the *Official Gazette* and in the locality of a notification under sub-section (1) of section 4 or a

declaration under section 6 of the said Act has been previously made and is in force.

(2) Proceedings under section 49 and sub-section (1) of section 51 of the Madras City Improvement Trust Act, 1950, shall be substituted for and have the same effect as proceedings under section 5A of the said Act.

(3) Subject to the provisions of paragraphs 6 and 7 of this Schedule, the issue of a notice under clause (c) of sub-section (3) of section 40 of the Madras City Improvement Trust Act, 1950, in the case of land proposed to be acquired in pursuance of that clause, and in any other case the publication of a notification under section 53 of that Act shall be substituted for and have the same effect as a declaration under section 6 of the said Act, except where a declaration under the last-mentioned section has been previously made and is in force.

3. In section 15 of the said Act, for the word and figures "and 24", the figures, word and letter "24 and 24-A" shall be deemed to be substituted.

4. In sub-section (3) of section 17 of the said Act, after the word and figures "section 24", the words, figures and letter "or section 24-A" shall be deemed to be inserted.

5. After section 17 of the said Act, the following section shall be deemed to be inserted, namely :—

"17-A. Transfer of land to Board :—In every case referred to in section 16 of section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board ; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

6. (1) In sub-section (1) of section 23 of the said Act, for clauses first and sixthly, the following clauses shall respectively be deemed to be substituted, namely,—

"first, the market-value of the land—

(a) at the date of the issue of the notice under clause (b) of sub-section (3) of section 40 of the Madras City Improvement Trust Act, 1950, in case the land is proposed to be acquired in pursuance of that clause ; and

(b) at the date of the first publication of the notice under section 47 of that Act, in any other case."

"sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the date referred to in paragraph (a) or paragraph (b), as the case may be, of clause first, and the date on which the Collector takes possession of the land."

(2) In the same section, sub-section (2) shall be omitted and in lieu thereof the following sub-section shall be deemed to have been substituted, namely,—

"(2) For the purpose of clause first of sub-section (1) of this section—

(a) if the market-value of the land has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

(b) if any person, otherwise than in accordance with the provisions of this Act, erects, re-erects, adds to, or alters any wall or building so

as to make the same project into the street alignment or beyond the building line prescribed by any scheme made under this Act, then, any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded”

7. For clause seventhly of section 24 of the said Act, the following clause shall be deemed to be substituted, namely,—

“seventhly, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair.”

8. After section 24 of the said Act, the following section shall be deemed to be inserted, namely,—

“24-A. Further provisions for determining compensation :—In determining the amount to be awarded for any land acquired for the Board under this Act, regard shall also be had to the following provisions, namely,—

(1) When any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land.

(2) If, in the opinion of the Court, any building is in a defective state from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Court considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state.

(3) If, in the opinion of the Court, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, minus the cost of demolishing the building.”

9. After section 48 of the said Act, the following section shall be deemed to be inserted, namely,—

“48-A. Compensation to be awarded when land not acquired within two years :—(1) Where the Collector has not made an award under section 11 in respect of any land within a period of two years from the date of the publication of the declaration under section 6 or of the issue of a notice under clause (c) of sub-section (3) of section 40 of the Madras City Improvement Trust Act, 1950, or of the publication of a notification under section 53 of that Act, as the case may be, the owner of the land shall, unless he has been responsible for the delay to a material extent, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

9. Notwithstanding anything contained in paragraph (a) of sub-rule (2) of rule 8, the compensation payable to a person on whom proprietary rights were conferred by the Kawardha State Wajib-ul-arz Amendment Act, 1947, shall be the aggregate of the following namely :—

- (i) the amount payable to him for the rights held by him immediately before the promulgation of the said Act calculated in accordance with paragraph (b) or paragraph (c) of sub-rule (2) of rule 8, as the case may be ; and
- (ii) an amount equal to the net annual income determined in accordance with rule 7 for the further rights conferred by the said Act.

Notes

In *Balammal & Ors. v. State of Madras*, (a) the Supreme Court has held that the Schedule Cl. (6) (2) read with S. 73 of the Madras City Improvement Act No. 37 of 1950 in so far as it deprived the owners of the lands of the statutory addition of 15 per cent to the market-value of lands under S. 23 (2) of the L. A. Act, is violative of the equality clause Art. 14 of the Constitution and is on that account void.

It was further held that the Supreme Court will not interfere or entertain an appeal only on question of valuation except upon questions of principle including errors in appreciating or applying the rules of evidence or the judicial methods of weighing evidences, (b).

Madras (2)

THE LAND ACQUISITION (MADRAS AMENDMENT ACT XXI OF 1948)

An Act further to amend the Land Acquisition Act, 1894, in its application to the Province of Madras

WHEREAS it is expedient further to amend the Land Acquisition Act, 1894, in its application to the Province of Madras, for the purposes herein-after appearing ;

1. Short title and extent :—(1) This Act may be called The Land Acquisition (Madras Amendment) Act, 1948.

(2) It extends to the whole of the Province of Madras.

2. Amendment of Sec. 17, Central Act, I of 1894 :—In Sec. 17 of the Land Acquisition Act, 1894—

(a) to sub-section (1), the following Explanation shall be added, namely,—

“*Explanation.*—This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of scattered trees or temporary structure such as huts, pandals or sheds.”

(b) in the first paragraph of sub-section (2)—

(i) before the word “whenever” at the commencement, the following shall be inserted, namely,—

(a) *Balammal and Ors. v. State of Madras*, A. I. R. 1968, Mad. 1425 : 1969 (1) S. C. A. 51.

(b) *Nowroji Rustomji Wadia v. Bombay Government*, L. R. 52 I. A. 367,

“In the following cases, that is to say—” ;

- (ii) the portion beginning with the word “whenever” and ending with the words “access to any such station” shall be lettered as clause (a) and after the clause as so lettered, the following clause be inserted, namely,—

“(b) whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land—

(i) for the purpose of any library or educational institution, or

(ii) for the construction, extension or improvement of—

(a) any building or other structure in any village for the common use of the inhabitants of such village, or

(b) any godown for any society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, or

(c) any dwelling-house for the poor, or

(d) any irrigation tank, irrigation or drainage channel or any well, or

(e) any road.”

Madras (3)

THE MADRAS DISTRICT MUNICIPALITIES ACT, V OF 1920 (Madras Council)

Sections 67, 165, 168 and 343.

Procedure for acquisition of immovable property under the Land Acquisition Act, 1894.

67. Any immovable property which any municipal authority is authorized by this Act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894, and on payment of the compensation awarded under the said Act in respect of such property and of any other charges incurred in acquiring it, the said property shall vest in the Council.

165. Acquisition of land and buildings for improvement of streets.

(1) The Council may acquire—

(a) any land required for the purpose of opening, widening, extending, or otherwise improving any public street, or of making any new public street, and the buildings, if any, standing upon such land ; and

(b) any land outside the proposed street-alignment, with the buildings, if any, standing thereupon :

Provided that, in any case in which it is decided to acquire any land under clause (b) of this sub-section, the owner of such land may retain it by paying to the Municipal Council an annual sum to be fixed by the Council

in that behalf, or a lump sum to be fixed by the council, not being less than 25 times such annual sum and subject to such conditions as the Council thinks fit as to the removal of the existing building, if any, the description of the new building (if any) to be erected, the period within which the new building (if any) shall be completed and any other similar matters.

(2) If any sum payable in pursuance of the proviso to sub-section (1) in respect of any land be not duly paid, it shall be recoverable in the manner provided by this Act for the collection of taxes, and, if not recovered, the chairman may enter upon the land, and sell it, with any erections standing thereon, by public auction, subject to the conditions, if any, imposed under sub-section (1) above and may deduct the said sum and the expenses of the sale from the proceeds of the sale and shall pay the balance (if any) to the defaulter.

(3) Any sum paid in pursuance of the proviso to sub-section (1) or recovered under sub-section (2) in respect of any land shall be left out of account in determining the annual value of such land for the purpose of assessing it to the property tax.

(4) Any land or building acquired under sub-section (1), clause (b), may be sold, leased or otherwise disposed of after public advertisement, and any conveyance made for that purpose may comprise such conditions as the Council thinks fit as to the removal of the existing building, if any the description of the new building (if any) to be erected and the period within which the new building (if any) shall be completed, and other similar matters.

(5) The council may require any person to whom any land or building is transferred under sub-section (4) to comply with any conditions comprised in the said conveyance before it places him in possession of the land or building.

168. Setting back projecting building or walls :—(1) Where any building or part thereof abutting on a public street is within a street-alignment defined under section 166, the Chairman may, whenever it is proposed—

(a) to rebuild such building or take it down to an extent exceeding one-half thereof above the ground level, such half to be measured in cubic feet ; or

(b) to remove, reconstruct or make any addition to any portion of such building which is within the street alignment ; in any order which he issues concerning the rebuilding, alteration or repair of such building, require such building to be set back to the street alignment.

(2) Where any building or any part thereof within the street-alignment falls down or is burnt down, or is, whether by order of the chairman or otherwise, taken down, or where any private land without any building thereon lies within the street-alignment, the chairman may forthwith take possession on behalf of the council of the portion of land within the street-alignment and, if necessary clear it.

(3) Land acquired under this section shall be deemed a part of the public street and shall vest in the municipal council.

(4) When any building is set back in pursuance of any requisition made under sub-section (1), or when the chairman takes possession of any land

under sub-section (2), the council shall forthwith make full compensation to the owner for any direct damage which he may sustain thereby.

Explanation.—The expression “direct damage” as used in sub-section (4) with reference to land means the market value of the land taken and the depreciation, if any, in the ordinary market value of the rest of the land resulting from the area being reduced in size ; but does not include damage to the prospective loss of any particular use to which the owner may allege that he intended to put the land, although such use may be injuriously affected by the reduction of the site.

304. Power of municipality to pay compensation :—In any case not otherwise expressly provided for in this Act, the chairman may, with the approval of the council, pay compensation to any person who sustains damage by reason of the exercise by any municipal authority, officer or servant, of any of the powers vested in them by this Act or any other law, or by any rule, bye-law, or regulation made under it.

Madras (4)

THE MADRAS CITY MUNICIPAL ACT, IV OF 1919

Sections 205, 207 and 232.

Power of authorities in regard to streets

205. (1) The commissioner may, subject always to such sanction as may be required under chapter 4,—

(a) lay out and make new streets ;

(b) construct bridges and sub-ways ;

(c) turn, divert or with the special sanction of the council and the Governor in council, permanently close any public street or part thereof ;

(d) widen, open, extend or otherwise improve any public street.

(2) reasonable compensation shall be paid to the owners and occupiers of any land or buildings which are acquired for or affected by any such purposes.

207. Acquisition of land and buildings for improvement of streets.

(1) The Commissioner may, subject always to such sanction as may be required under Chapter, 4, acquire—

(a) any land required for the purpose of widening, opening, extending or otherwise, improving any public street or of making any new public street, and the buildings, if any, standing upon such land ;

(b) Any land outside the proposed street-alignment, with the buildings, if any, standing thereupon, which the council may consider it expedient to acquire.

(2) Any land or building acquired under sub-section (1), clause (b), may be sold, leased or otherwise disposed of after public advertisement, and any conveyance made for that purpose may comprise such condition as the standing committee thinks fit as to the removal of the existing

building, if any, the description of the new building (if any) to be erected, the period within which the new building (if any) shall be completed, and any other similar matters.

(3) The standing committee may require any person to whom any land or building is transferred under section (2) to comply with any conditions comprised in the said conveyance before it places him in possession of the land or building.

232. Building at corner of streets :—(1) The council may require any building intended to be erected at the corner of two streets to be rounded off or splayed off to such height and to such extent or otherwise as it may determine and may acquire such portion of the site at the corner as it may consider necessary for public convenience or amenity.

(2) For any land so acquired the corporation shall pay compensation.

(3) In determining such compensation, allowance shall be made for any benefit accruing to the same premises from the improvement of the streets.

Madras (5)

THE MADRAS TOWN PLANNING ACT, VII OF 1920

33. Immovable property required for the purpose of a town planning scheme shall be deemed to be land needed for a public purpose, within the meaning of the Land Acquisition Act, 1894, and may be acquired—

(a) under the said Act or,

(b) under the said Act as modified in the manner hereinafter provided in this chapter.

For modifications *vide* Sections 34 and 35 of the said Act.

Madras (6)

MADRAS ESTATES (Abolition and Conversion into Ryotwari) ACT 1948 : ACT NO. XXI OF 1948

Received the assent of His Excellency the Governor-General on the 2nd April, 1949, first published in the "Fort St. George Gazette" on the 19th April, 1949;.

An Act to provide for the repeal of the Permanent Settlement, the acquisition of the rights of landholders in permanently settled and certain other estates in the Province of Madras, and the introduction of the ryotwari settlement in such estates.

WHEREAS it is expedient to provide for the repeal of the Permanent Settlement, the acquisition of the rights of landholders in permanently settled and certain other estates in the Province of Madras, and the introduction of the ryotwari settlement in such estates ; It is hereby enacted as follows :—

Preliminary

1. Short title, extent, application and commencement.—(1) This Act may be called the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948.

(2) It extends to the whole of the Province of Madras, except the Presidency-town of Madras as it stood on the 1st day of July, 1908, the district of Malabar and the portion of the Nilgiri district known as the South-east Wynaad.

(3) It applies to all estates as defined in section 3, clause (2), of the Madras Estates Land Act, 1908, except inam villages which became estates by virtue of the Madras Estates Land (Third Amendment) Act, 1936¹.

(4) This section and sections 2, 4, 5, 7, 8, 9, 62, 67 and 68 shall come into force at once ; and the rest of this Act shall come into force in regard to any zamindari, under-tenure or inam estate, on such date as the Government may by notification, appoint.

3. Consequences of notification of estate.—With effect on and from the notified date and save as otherwise expressly provided in this Act—

(a) the Madras Permanent Settlement Regulation 1802, the Estates Land Act, and all other enactments applicable to the estate as such except the Madras Estates Land (Reduction of Rent) Act, 1947, shall be deemed to have been repealed in their application to the estate².

(b) the entire estate (including all communal lands and perambokes ; other non-ryoti lands, waste lands ; pasture lands ; lanka lands, forests, mines and minerals : quarries ; rivers and streams ; tanks and irrigation works ; fisheries ; and ferries), shall stand transferred to the Government and vest in them, free of all encumbrances ; and the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate³ ;

Madras (Tamil Nadu) (7)**THE LAND ACQUISITION (Madras Amendment) ACT NO. 23
OF 1961**

(Received assent of President on 22-6-61 published in fort St. George Gazette on 5-7-61).

1. Short title, extent and commencement :—(1) This Act may be called the Land Acquisition (Madras Amendment) Act, 1961.

(2) It extends to the whole of the State of Madras.

(3) It shall come into force on such date as the State Government may, by notification, appoint, and different dates may be appointed for different areas.

¹ Madras Act of 1908. Madras Act XVIII of 1936.

² Madras Regulation XXV of 1802. Madras Act of 1908, Madras Act XXX of 1947.

³ Madras Act of 1864, Madras Act VII of 1865.

2. Definition :—In this Act unless the context otherwise requires, “housing scheme” means any State Government Scheme the purpose of which is increasing house accommodation and includes any scheme by a local authority, Company or body corporate for such purpose undertaken with the previous sanction of State Government.

* * *

4. Application of the Act to pending cases of acquisition :—The provisions of section 3 shall apply also to every case in which proceedings have been started before the commencement of this Act for the acquisition of any land for the execution of any housing scheme, provided that no award has been made by the Collector under section 11 of Land Acquisition Act 1894 (Central Act 1 of 1894), before such commencement.

5. Saving of other laws :—Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matter dealt with in this Act.

[For cases under this Act see footnote (a) and (b)]

PART III

CHAPTER X

Mysore

THE LAND ACQUISITION (MYSORE EXTENSION AND AMENDMENT) ACT, 1961

(Mysore Act No. 17 of 1961)

An Act to extend the Land Acquisition Act, 1894 (Central Act I of 1894), to the whole of the State of Mysore and further to amend it in its application to the State.

Whereas it is expedient to extend the Land Acquisition Act, 1894 (Central Act I of 1894), to the whole of the State of Mysore and further to amend it in its application to the State of Mysore ;

Be it enacted by the Mysore State Legislature in the Twelfth Year of the Republic of India as follows :—

1. Short title, extent and commencement :—(1) This Act may be called the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

(2) It extends to the whole of the State of Mysore.

(3) It shall come into force at once.

(a) *The State of Madras v. S. Mohammad Ibrahim*, A. I. R. 1960, Mad. 252 ; I. L. R. 1960, Mad. 369.

(b) *Seva Prokasan v. State of Madras*, A. I. R. 1964, Mad. 115.

2. Repeal of certain Acts :—(1) The Mysore Land Acquisition Act, 1894 (Mysore Act VII of 1894), as in force in the Mysore Area ; the Land Acquisition Act, 1309 (Hyderabad Act IX of 1309 Fasli), as in force in the Hyderabad Area ; the Land Acquisition (Bombay Amendment) Act, 1938 (Bombay Act XVIII of 1938), the Land Acquisition (Bombay Amendment) Act, 1945 (Bombay Act XX of 1945), the Land Acquisition (Bombay Amendment) Act, 1948 (Bombay Act IV of 1948), the Land Acquisition (Bombay Amendment) Act, 1950 (Bombay Act XXVII of 1950), the Land Acquisition (Bombay Amendment) Act, 1953 (Bombay Act XXXV of 1953), as in force in the Bombay Area ; the Land Acquisition (Madras Amendment) Act, 1948 (Madras Act XXI of 1948) and the Land Acquisition (Madras Amendment) Act, 1953 (Madras Act XII of 1953), as in force in the Madras Area, are hereby repealed.

(2) As from the date of commencement of this Act, the amendments made by the Acts repealed by sub-section (1) (hereinafter in this section referred to as the repealed Acts) shall cease to continue and shall be omitted from the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter in this Act referred to as the principal Act), and such of the provisions thereof as were affected by the repealed Acts shall stand revived to the extent to which they would have otherwise continued in operation but for the passing of the repealed Acts ; and after such revival, the amendments made to the principal Act by this Act shall become operative :

Provided that in respect of provisions which cease to continue by virtue of this section, the provisions of section 6 of the Mysore General Clauses Act, 1899 (Mysore Act III of 1899), shall be applicable as if such provisions were enactments repealed by a Mysore Act and in respect of provisions which cease to continue but are re-enacted by this Act, the provision of section 24 of the said Mysore General Clauses Act, 1899, shall be applicable as if the said provisions had been repealed but re-enacted by a Mysore Act.

3. Extension of Central Act I of 1894 to the whole of the State of Mysore :—The Land Acquisition Act, 1894 (Central Act I of 1894), as amended by this Act is hereby extended to and shall be in force in the whole of the State of Mysore.

4. Substitution of the expression "Deputy Commissioner", for the expression "Collector" in Central Act I of 1894 :—In the principal Act, for the word "Collector" wherever it occurs, the words "Deputy Commissioner" shall be substituted.

5. Amendment of section 1 of Central Act I of 1894 :—In sub-section (2) of section 1 of the principal Act, after the expression "except the territories which, immediately before the first November 1956, were comprised in Part B States", the expression "other than territories specified in clauses (a) and (c) of sub-section (1) of section 7 of the States Reorganisation Act, 1956 (Central Act 37 of 1956)" shall be added.

6. Amendment of section 3 of Central Act I of 1894 :—In section 3 of the principal Act,—

(1) after clause (a), the following clause shall be inserted, namely :—

"(aa) the expression 'arable land' includes garden land" ;

(2) in clause (c) for the words "Deputy Commissioner" the words "an Assistant Commissioner in charge of a sub-division of a district" shall be substituted ;

(3) for clause (d), the following clause shall be substituted, namely :—

"(d) the expression "Court" means a principal civil court of original jurisdiction, and includes any other civil court empowered by the State Government by notification in the official gazette, to perform the functions of the court under this Act, within the pecuniary and local limits of its jurisdiction" ;

(4) After clause (d), the following clause shall be inserted, namely :—

"(dd) the expression "Co-operative Society" means a registered society within the meaning of the Co-operative Societies Act, 1912 (Central Act II of 1912), or any society registered or deemed to be registered under any law corresponding to that for the time being in force in any part of India" ;

(5) For clause (e), the following clause shall be substituted, namely :—

"(e) the expression 'Cojpany' means—

(i) a company formed and registered under the Companies Act, 1956 (Central Act I of 1956) ;

(ii) a company formed and registered under any previous Company Law for the time being in force in any part of India other than the State of Jammu and Kashmir ;

(iii) a company formed and registered under any law for the time being in force in the State of Jammu and Kashmir ;

(iv) a company—

(a) incorporated under any law relating to companies for the time being in force in any foreign country, and

(b) having its principal place of business in India ;

(v) a company incorporated by an Indian law relating to a particular company ;

(vi) a co-operative society ;

(vii) a society registered under the Societies Registration Act, 1860 (Central Act XVI of 1860) or under any law corresponding to that Act for the time being in force in any part of India ; and

(viii) a corporation created by or under any law for the time being in force in any part in India not being a corporation owned or controlled by the State" ;

(6) After clause (ee), the following clause shall be inserted, namely :—

"(eee) the expression 'prescribed' means prescribed by rules made under this Act" ;

(7) For clause (f), the following clause shall be substituted, namely—

"(f) the expression 'public purpose' includes—

(i) the provision of village sites ;

(ii) the provision of land for planned development from public funds and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned ;

- (iii) the provision of land for town or rural planning under any law relating to such planning ;
- (iv) the provision of land,—
 - (a) for carrying out any housing scheme or health scheme sponsored by the Central Government or any State Government or a local authority ; or
 - (b) for clearing slum areas ; or
 - (c) for relieving congestion ; or
 - (d) for housing poor, landless, or displaced persons, or persons residing in areas affected by floods ;
- (v) the provision of,—
 - (a) residence for any person holding an office of profit under the Central Government or a State Government, or accredited as a diplomatic consular or trade representative of a foreign Government ;
 - (b) building for locating a public office ;
- (vi) the provision of land for corporations owned or controlled by the State, or other nationalised industries or concerns ;
- (vii) the provision of land for any local authority and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development ;
- (viii) the provision of land for a company,—
 - (a) where the land is needed for the construction of some work and such work is likely to prove substantially useful to the public, or
 - (b) where the land is needed by a building co-operative society or corporation for the construction of houses ;
- (ix) the provision of land for any charitable trust.

Explanation.—"Charitable trust" includes a trust established or to be established for the relief of the poor, education, medical relief, or advancement of any other object of general public utility";

(8) In proviso (iii) to clause (g), for the words, figures and brackets "Chapter XXVI of the Code of Civil Procedure (14 of 1882)" the words, figures and brackets, "Order XXXII of the First Schedule to the Code of Civil Procedure, 1908 (Act 5 of 1908)" shall be substituted.

(9) After clause (g), the following clause shall be inserted, namely :—

"(h) the expression "local authority" includes a town planning authority and a city improvement trust board."

7. Amendment of section 4 of Central Act I of 1894 :—In section 4 of the principal Act,—

(1) in sub-section (1),—

- (a) after the words "the appropriate Government" the words "or the Deputy Commissioner" shall be inserted ;
- (b) for the words "notification to that effect", the words "notification stating the purpose for which the land is needed, or likely to be needed, and describing the land by its survey number, if any, and

also by its boundaries and its approximate area" shall be substituted ;

- (c) after the words "the said locality", the following sentence and explanation shall be added, namely :—

"The Deputy Commissioner may also cause a copy of such notification to be served on the owner, or where the owner is not the occupier, on the occupier of the land.

Explanation.—The expression "convenient places" includes, in the case of land situated in a village, the office of the panchayat within whose jurisdiction the land lies."

- (2) After sub-section (1), the following sub-section shall be inserted, namely :—

"(1A) The notification under sub-section (1) shall also specify the date (such date not being less than thirty days from the date of publication of the notification) on or before which, and the manner in which, objections to the proposed acquisition may be made, under section 5A."

- (3) In sub-section (2),—

- (a) for the word "Thereupon" the words "On the publication of such notification" shall be substituted ;
- (b) for the words "such Government", the words "such Government or by the Deputy Commissioner" shall be substituted ;
- (c) in the first clause occurring after the words "servants and workmen", for the words "any land in such locality", the words "the land" shall be substituted ;

- (4) After sub-section (2), the following sub-sections shall be inserted, namely :—

"(3) Where the acquisition is for a company, an officer of such company may be authorised by the appropriate Government or the Deputy Commissioner to exercise the powers conferred by sub-section (2).

(4) The Officer authorised under sub-section (2) or sub-section (3) shall complete his investigation and submit his report to the Deputy Commissioner within a period of three months (or within such longer period not exceeding six months in all as the Deputy Commissioner may allow), from the date of the publication of the notification under sub-section (1), and the Deputy Commissioner shall forward the report with his remarks to the appropriate Government along with his report under sub-section (2) of section 5A."

8. Amendment of section 5 of Central Act I of 1894 :—In section 5 of the principal Act, for the words "so authorised" the words, brackets and figures "authorised under sub-section (2) or sub-section (3) of section 4" shall be substituted.

9. Amendment of section 5-A of Central Act I of 1894 :—In section 5A of the principal Act,—

(1) In sub-section (1), for the words "within thirty days after the issue of the notification" the words, brackets and figures "on or before the date specified in the notification under sub-section (1) of section 4 in this behalf" shall be substituted.

(2) In sub-section (2),—

- (a) after the words “in writing”, the words “setting out the grounds thereof” shall be inserted ;
- (b) after the words “the appropriate Government” occurring in the first sentence, the words, brackets and figures “before the expiry of six weeks from the last date for filing objections or before the expiry of two weeks from the date on which he receives the report under sub-section (4) of section 4 whichever is later,” shall be inserted ;
- (c) for the words “and a report containing his recommendations on the objections” the words “and a report containing his recommendations on the objections, and the fact of having submitted the report shall be communicated to the objectors : provided that the appropriate Government may, if it is satisfied that there was sufficient cause for the delay, condone any delay in the submission of the report by a period not exceeding one year” shall be substituted.

10. Amendment of section 6 of Central Act I of 1894 :—In section 6 of the principal Act,—

(1) In sub-section (1), for the portion commencing with the words “a declaration shall be made to that effect” and ending with the words “some fund controlled or managed by a local authority”, the words, brackets, figure and letter “such Government shall direct the Deputy Commissioner to proceed under sub-section (1A)” shall be substituted.

(2) After sub-section (1), the following sub-section shall be inserted, namely :—

“(1A) The Deputy Commissioner shall, thereupon, within two months from the date on which he receives such direction,—

- (a) cause the land (unless it has been already marked out under section 4) to be marked out ;
- (b) also cause it to be measured, and, if no plan has been made therefor, a plan to be made of the same ; and
- (c) report to the appropriate Government the result of his operations under this sub-section.

The appropriate Government shall then make a declaration that the land is needed for a public purpose or for a company.”

(3) In sub-section (2),—

- (a) after the words “the purposes for which it is needed” the words “the precise boundaries and survey number, if any, of the land and” shall be inserted ; and
- (b) for the words “where a plan shall have been made of the land and the place where such plan may be inspected” the words “the place where a plan of the land may be inspected” shall be substituted.

11. Omission of section 8 of Central Act I of 1894 :—Section 8 of the principal Act shall be omitted.

12. Amendment of section 9 of Central Act I of 1894 :—In section 9 of the principal Act,—

(1) In sub-section (2),—

(a) for the words, brackets and figure “and the amount and particulars of their claims to compensation for such interest, and their objections (if any) to the measurements made under section 8”, the words “the amount and particulars of their claims to compensation for such interests, the basis on which the compensation so claimed is computed, their objections, if any, to the area as specified in the declaration, and such other matters as may be prescribed” shall be substituted ;

(b) for the words “The Collector may, in any case, require such statement to be made in writing and”, the words “Such statement shall be made in writing in the prescribed form and shall be” shall be substituted.

(2) In sub-section (3) after the words “the land is situate”, the following sentence shall be added, namely :—

“Such notice shall be served at least fifteen days before the date on which the persons concerned have to appear and state their respective interests before the Deputy Commissioner.”

(3) In sub-section (4) for the words “by post” the words “by registered post” shall be substituted, and the words, figures and brackets “and registered under Part III of the Indian Post Office Act, 1886 (XIV of 1886)” shall be omitted.

13. Amendment of section 10 of Central Act I of 1894 :—In sub-section (1) of section 10 of the principal Act, for the words “may also require” the words “may also by notice require” shall be substituted.

14. Amendment of section 11 of Central Act I of 1894 :—To section 11 of the principal Act, the following proviso shall be added, namely :—

“Provided that no such award shall be made by the Deputy Commissioner, without the previous approval of the State Government or such officer as the State Government may appoint in this behalf who in the case of an award made by an officer below the rank of the Deputy Commissioner of a district, may be the Deputy Commissioner of the district.”

15. Amendment of section 12 of Central Act I of 1894 :—In section 12 of the principal Act,—

(1) In sub-section (1), after the words “and shall” the words, figures and letter “subject to the provisions of section 15-A and” shall be inserted ;

(2) For sub-section (2), the following sub-section shall be substituted, namely :—

“(2) The Deputy Commissioner shall give immediate notice of his award, or the amendment thereof made under section 12-A, to the persons interested.”

16. Insertion of new section 12-A in Central Act I of 1894 :—(1) After section 12 of the principal Act, the following section shall be inserted, namely :—

“12-A. Amendment of award :—(1) Any clerical or arithmetical mistake in an award or errors arising therein from accidental slips or

ommission may, at any time not later than six months from the date of the award, be corrected by the Deputy Commissioner, either on his own motion or on the application of a person interested and the award so corrected shall be deemed to have been amended accordingly.

- (2) If the award so amended disclosed any overpayment, the Deputy Commissioner shall, either immediately after the amendment of the award or after the expiry of the time allowed to make a reference to the court from the amendment of the award, issue a notice to a person to whom overpayment was made that if the amount overpaid is not paid back to the State Government within one month after receipt of the notice, the amount overpaid shall be recovered as an arrear of land revenue and after the expiry of the time stated in the notice, the amount shall be so recoverable."

17. Insertion of new section 15-A in Central Act I of 1894 :—After section 15 of the principal Act, the following section shall be inserted, namely :—

"15-A. Power of State Government to call for proceedings and pass orders thereon :—The State Government may, at any time before an award is made by the Deputy Commissioner under section 11, call for and examine the record of any order passed by the Deputy Commissioner or of any inquiry or proceedings of the Deputy Commissioner for the purpose of satisfying itself as to the legality or propriety of any order passed and as to the regularity of such proceedings. If, in any case, it shall appear to the State Government that any order or proceedings so called for should be modified, annulled or reversed, it may pass such order thereon as it deems fit."

18. Amendment of section 16 of Central Act I of 1894 :—Section 16 of the principal Act shall be re-numbered as sub-section (1) of that section, and after the sub-section as so re-numbered, the following sub-section shall be added, namely :—

- "(2) The fact of such taking possession may be notified by the Deputy Commissioner in the official Gazette, and such notification shall be evidence of such fact."

19. Amendment of section 17 of Central Act I of 1894 :—In section 17 of the principal Act,—

- (1) The following explanation shall be added to sub-section (1), namely :—

"Explanation.—This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of scattered trees or temporary structures, such as huts, pandals or sheds."

- (2) In the first paragraph of sub-section (2) after the portion beginning with the word "whenever" and ending with the words "access to any such station" the following words shall be added, namely :

"or whenever owing to a like emergency or owing to breaches or other unforeseen events causing damage to roads, rivers, channels or tanks, it becomes necessary for the State Government to acquire

the immediate possession of any land for the purpose of maintaining road communication or irrigation or water-supply service, as the case may be” ;

20. Amendment of section 18 of Central Act I of 1894 :—In section 18 of the principal Act,—

(1) After the word “award”, where it occurs for the first time, the words “or amendment thereof” shall be inserted ; and after the said word, wherever it occurs thereafter the words “or the amendment” shall be inserted.

(2) In sub-section (2), for the proviso the following proviso shall be substituted, namely :—

“Provided that every such application shall be made within ninety days from the date of service of the notice from the Deputy Commissioner under sub-section (2) of section 12.”

(3) After sub-section (2) the following sub-section shall be added, namely :—

“(3) (a) The Deputy Commissioner shall within ninety days from the date of receipt of an application under sub-section (1) make a reference to the Court.

(b) If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application, the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may fix.”

21. Amendment of section 19 of Central Act I of 1894 :—In sub-section (2) of section 19 of the principal Act, after the words “parties interested respectively” the words “and any other information available with the Deputy Commissioner relating to the matters referred to the Court” shall be added.

22. Amendment of section 20 of Central Act I of 1894 :—In section 20 of the principal Act,—

(1) For the words “determine the objection”, the words “determine the reference” shall be substituted ;

(2) For clauses (a), (b) and (c) the following clauses shall be substituted namely :—

“(a) the Deputy Commissioner ;

(b) all persons interested in the reference ; and

(c) if the acquisition is not made for Government, the person or authority for whom it is made.”

23. Amendment of section 24 of Central Act I of 1894 :—In section 24 of the principal Act,—

(1) In clause *seventhly* for the words, figures and brackets, “publication of the notification under section 4, sub-section (1)”, the words, figures and brackets “publication of the notification under sub-section (1) of section 4, unless in the case of improvements, such improvements were necessary for the maintenance of any building in a proper state of repair ; or”, shall be substituted ; and

(2) After clause *seventhly*, the following clause shall be inserted, namely :—

“*eightily*, where the market value of the land acquired is increased by reason of the use thereof in a manner which may be restrained by any Court or is contrary to law or is detrimental to the health of the inmates of the premises, or public health, the amount of that increase.”

24. Amendment of section 25 of Central Act I of 1894 :—In section 25 of the principal Act, for the words “the applicant” wherever they occur, the words “a person interested” shall be substituted.

25. Amendment of section 26 of Central Act I of 1894 :—In sub-section (2) of section 26 of the principal Act, after the words, figures and brackets “the Code of Civil Procedure, 1908 (V of 1908)” the words “and the provision of the said Code relating to execution shall, so far as may be, apply to the execution of such award : Provided that execution shall not be issued on any such award against the Government or any officer thereof unless it remains unsatisfied for a period of ninety days from the date of such award”, shall be inserted.

26. Amendment of section 27 of Central Act I of 1894 :—In sub-section (2) of section 27 of the principal Act, after the words “award of the Collector” the words “or the amendment thereof” shall be inserted ; and for the word “applicant” the word “party” shall be substituted.

27. Amendment of section 28 of Central Act I of 1894 :—In section 28 of the principal Act, for the words “six per centum”, the words “five per centum” shall be substituted.

28. Insertion of new section 30-A in Central Act I of 1894 :—In Chapter IV of the principal Act, after section 30, the following section shall be inserted, namely :—

“**30-A. Apportionment of compensation :—**(1) Where there are several persons interested in the amount of compensation, the Court shall apportion the amount according to the interest of each person, and shall specify in the award the amount due to each person.

(2) Each such person shall be entitled to obtain execution of the award to the extent of the amount due to him without the consent or concurrence of the other persons.”

29. Amendment of section 34 of Central Act I of 1894 :—In section 34 of the principal Act, for the words “six per centum”, the words “five per centum” shall be substituted.

30. Amendment of section 35 of the Central Act I of 1894 :—In section 35 of the principal Act,—

(1) After sub-section (1), the following sub-section shall be inserted, namely :—

“(1-A) Before issuing a direction under sub-section (1), the State Government may require the Deputy Commissioner to submit—

(a) a plan of the land which is needed for occupation and use ;
and

(b) an estimate of the compensation that would be payable under sub-section (2),

and upon the issue of such a requisition, the Deputy Commissioner shall cause public notice of the substance of the requisition to be given at convenient places in the locality in which the land is situate.

(1-B) After the issue of such notice, it shall be lawful for any officer either generally or specially authorised by the Deputy Commissioner in this behalf, for his servants and workmen to exercise the powers conferred by sub-section (2) of section 4.

(1-C) The officer authorised under sub-section (1-B) shall at the time of his entry pay or tender payment for all necessary damage to be done as aforesaid and in the case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Deputy Commissioner and such decision shall be final."

(2) In sub-section (2) for the words "The Collector shall thereupon" the words "Upon the issue of a direction under sub-section (1) the Deputy Commissioner shall" shall be substituted.

31. Insertion of new section 37-A in Central Act I of 1894 :—After section 37 of the principal Act, the following section shall be inserted, namely :—

"37-A. Temporary occupation in urgent cases :—(1) Notwithstanding anything contained in section 35, whenever it appears to the Deputy Commissioner that the temporary occupation and use of any waste or arable land are needed for the purpose of affording accommodation or other relief to persons displaced owing to damage caused to their dwelling houses or other buildings by fire, flood or other unforeseen events, the Deputy Commissioner may enter upon and take possession of the land and use or permit the use thereof in accordance with such terms as he may specify, for a period not exceeding one year from the commencement of such occupation.

(2) The Deputy Commissioner shall immediately report to the State Government the fact of such taking possession and the reasons therefor and shall give effect to such orders as the State Government may make in the matter.

(3) The Deputy Commissioner shall, as soon as may be after taking possession of the land, give notice in writing to the persons interested in such land of the fact of taking possession and the period for which the land would be occupied and used, and shall for the occupation and use thereof for such period and for the materials, if any, to be taken therefrom pay to the persons interested such compensation, as shall be agreed upon in writing between him and such persons, respectively.

(4) In case the Deputy Commissioner and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Deputy Commissioner shall refer such difference to the decision of the Court.

- (5) On the expiration of the period fixed under sub-section (1), the Deputy Commissioner shall restore the land to the persons interested therein. The provisions of sub-section (2) of section 36 and section 37 shall apply *mutatis mutandis* to such restoration."

32. Substitution of new section for section 45 of Central Act I of 1894 :— For section 45 of the principal Act, the following section shall be substituted, namely :—

- "45. Service of notices :—**(1) Subject to the provisions of this section and any rules that may be made under this Act, the mode of service of notices issued under this Act shall be as follows :—
- (a) A notice of a general nature or affecting a class of persons shall be published,—
 - (i) in the official Gazette or any newspaper published in Kannada or English and in circulation in the District in which the land concerned is situate, and
 - (ii) by affixing copies of the notice in prominent places on or near the land concerned ;
 - (b) A notice affecting an individual corporation or firm shall be served in the manner provided for the service of summons under rule 2 of Order XXIX or Rule 3 of Order XXX, as the case may be, of the First Schedule to the Code of Civil Procedure, 1908 ;
 - (c) A notice affecting an individual person (not being a corporation or firm) shall be served in the manner provided for the service of summons in the Code of Civil Procedure, 1908, or by sending it by registered post under a letter addressed to the person named therein at his last known residence, address or place of business, and the notice shall be deemed to be served on such person on the date on which the notice sent by registered post will, in the usual course of post, be received by the addressee.
- (2) Where the ownership of the land is in dispute or where the persons interested in the land are not readily traceable and the notice cannot be served without undue delay, the notice may be served by publishing it in the official Gazette, where possible, by affixing a copy thereof at any conspicuous part of the land to which it relates."

33. Amendment of section 46 of Central Act I of 1894 :—In section 46 of the principal Act—

- (a) for the words and figure "or section 8" the words, figures, brackets and letter "sub-section (1-A) of section 6 or section 35" shall be substituted ;
- (b) for the words and figure "under section 4" the words and figures "under section 4 or section 35" shall be substituted.

34. Amendment of section 50 of Central Act I of 1894 :—In section 50 of the principal Act, after sub-section (1), the following sub-sections shall be inserted, namely,—

“(1-A) If the charges of and incidental to such acquisition is not defrayed from such funds by a local authority after such time as may be fixed by the State Government, the State Government may by order direct the person in custody of such fund to pay the amount due in priority to any other charge against such fund and such person shall, notwithstanding anything contained in any law, so far as the fund to the credit of the local authority admit, be bound to comply with such order.

(1-B) Without prejudice to any other mode of recovery from any company liable to defray the charges of and incidental to such acquisition, the amount payable by the company may, notwithstanding anything contained in any law, be recovered from the company as an arrear of land revenue.”

35. Substitution of new section for section 54 of Central Act I of 1894 :—

For section 54 in the principal Act, the following section shall be substituted, namely :—

“**54. Appeals in proceedings before Court :—**(1) Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, an appeal shall lie from the award, or from any part of the award, of the Court in any proceedings under this Act to the Court authorised to hear appeals from the decision of that Court.

(2) From any decree of a Court, other than the High Court, passed on an appeal under sub-section (1), an appeal shall lie to the High Court, if, but only if, the amount or value of the subject-matter in dispute in appeal exceeds two thousand rupees or the case involves any question of title to land.

(3) From any decree of the High Court passed on an appeal under sub-section (1), an appeal shall lie to the Supreme Court, subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLV of the First Schedule to the said Code.”

PART III
CHAPTER XI

Orissa (1)

THE ORISSA DEVELOPMENT ETC. L. A. ACT 18 OF 1948
ORISSA ACT XVIII OF 1908

[THE ORISSA DEVELOPMENT OF INDUSTRIES, IRRIGATION,
AGRICULTURE, CAPITAL CONSTRUCTION AND RESETTLEMENT
OF DISPLACED PERSONS (LAND ACQUISITION) ACT, 1948]¹

(11th January, 1949)

(As modified up to the 1st March, 1965)

**An Act to provide for the speedy acquisition of land for the development
of industries, irrigation, agriculture, capital construction, resettlement
of displaced persons and for matters incidental thereto for the
[State]² of Orissa**

WHEREAS it is expedient to provide for the speedy acquisition of land for the purposes of the development of industries, irrigation, agriculture, capital construction, resettlement of displaced persons and for matters incidental thereto in the [State]² of Orissa ;

It is hereby enacted as follows :—

1. Short title, extent and commencement :—(1) This Act may be called the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Re-settlement of Displaced Persons (Land Acquisition) Act, 1948.

(2) It extends³ to the whole of the [State]² of Orissa.

(3) It shall come into force on such date or dates and in such areas as the [State]² Government may, by notification⁴, appoint.

2. Definitions :—In this Act, unless there is anything repugnant in the subject or context,—

(a) “capital construction” means the construction of the capital of the [State]² of Orissa ;

(b) “competent authority” means the Collector and includes any other person appointed by the [State]² Government by notification

¹ LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Orissa Gazette, Extraordinary*, dated the 3rd December, 1948 and for Proceedings in the Assembly, see Proceedings of the Orissa Legislative Assembly, 1948, Vol. VIII, pp. 194—209.

² Substituted by the Adaptation of Laws Order, 1950, for “Province”.

³ Extended to all the partially-excluded areas of the State of Orissa by notification No. 859—H. R. D.—60/48-R., dated the 22nd January, 1949, published in the *Orissa Gazette*, 1949, Pt. III, p. 153, see also Orissa L. S. R. & O., Vol. I, Pt. X.

⁴ This Act came into force throughout the State of Orissa with effect from the 25th January, 1949 by notification No. 914-R., dated the 24th January, 1949, published in the *Orissa Gazette*, 1949, Pt. III, p. 153.

- to perform all or any of the functions of a competent authority under this Act ;
- (c) "development of industries" shall mean and include the construction of the Hirakud Dam and other dams and reservoirs, Hydro-Electric Projects and such other schemes or projects as the [State]¹ Government may, by notification from time to time, specify in this behalf ;
 - (d) "displaced person" means any person who on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or fear of such disturbances in any area now forming part of Pakistan, has been displaced from or has left his place of residence in such area after the 1st day of March, 1947 and who has subsequently been residing in India, or any person who has been or may be displaced on account of construction or proposed construction of any of the projects referred to in sub-clause (c) above ;
 - (e) "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

3. Notice of acquisition of land :—(1) Whenever it appears to the [State]¹ Government that it is necessary or expedient to acquire speedily any land for the purpose of the development of industry, irrigation, agriculture, capital construction or the resettlement of displaced persons or any matter incidental thereto, a notification to that effect shall be published in the Gazette stating the area and the boundaries of the land proposed to be acquired and the competent authority shall cause public notice of the substance of such notification to be given at convenient places on or near the land to be acquired.

²[(2) Where in the opinion of the competent authority a reconnaissance survey is necessary to ascertain the area, boundaries and other particulars of the land proposed to be acquired before issue of the notification under sub-section (1) it shall be competent for the competent authority to issue a notice to that effect to the person or persons concerned and thereupon it shall be lawful for the competent authority or any officer authorised by him and for his servants and workmen,—

- (a) to enter upon and survey and take levels of any land in such locality ;
- (b) to dig or bore into the sub-soil ;
- (c) to do all other acts necessary to ascertain whether the land is adapted for such purpose ;
- (d) to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;
- (e) to mark such levels, boundaries and line by placing marks and cutting trenches ; and

¹ Substituted by the Adaptation of Laws Order, 1950, for "Provincial".

² Inserted by the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) (Amendment) Act, 1950 (Or. Act XVII of 1950), s. 2 (i).

(f) where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least forty-eight hours' notice in writing of his intention to do so.

(3) The competent authority or any officer so authorised shall at the time of such entry pay or tender payment for all damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector of the district, and in case the competent authority is the Collector himself, to the Commissioner of the Division making a full report of the nature and extent of the damage and of the circumstances :

Provided that a copy free of cost of the said report should be given at once to the party affected. The decision of the Collector of the district or the Commissioner, as the case may be, shall be final;

¹[(4)] Any notification issued under the provisions of section 4 of the Land Acquisition Act, 1894, for the acquisition of land for a public purpose in respect of the Hirakud Dam, reservoir and other necessary requirements of the Mahanadi Valley Scheme or Machkund Hydro-Electric Project or the Capital Construction Scheme before the commencement of this Act shall be deemed to be publication of notification under sub-section (1).

²[4] **Service on owner or occupier affected by notice of acquisition :—**

(1) As soon as may be after the publication of the notification under section 3, the competent authority shall cause to be served by delivering a copy of the notice on the owner of the land and also on the occupier in cases where the owner is not in occupation of the land. When such person cannot be found, the service may be made on any adult male member of his family residing with him ; and, if no such adult male member can be found, the notice may be served by affixing a copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business as well as by affixing a copy thereof in some conspicuous place in the office of the competent authority and also in some conspicuous part of the land proposed to be acquired. Where the person to be served is not readily traceable or the ownership of land is in dispute the competent authority shall publish in the Gazette a notice stating the particulars specified in sub-section (1) of section 3. A copy of such notice shall be affixed to some conspicuous part of the land proposed to be acquired and shall also be proclaimed by the beat of drums.]

(2) Any notice issued under the provisions of section 4 of the Land Acquisition Act, 1894, for the acquisition of land for a public purpose in respect of the Hirakud Dam, reservoir and other necessary requirements of the Mahanadi Valley Scheme or Machkund Hydro-Electric Project or the

¹ Renumbered by the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) (Amendment) Act, 1950 (Or. Act XVII of 1950, s. 2 (ii).

² Substituted by *idi*0, s. 3.

Capital Construction Scheme before the commencement of this Act shall be deemed to be a service of notice on the owner or occupier for the purpose of sub-section (1).

5. Vesting and taking possession of land :—(1) When a notice of acquisition is served or is published under section 4, the land shall vest absolutely in the [State]* Government free from all encumbrances on the date the notice is so served or published in the Gazette.

(2) The competent authority may at any time after the land has become so vested, proceed to take possession thereof :

Provided that such authority shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) The competent authority shall at the time of taking possession of such land where there are standing crops and trees (if any) prepare a record in the prescribed manner of such crops and tree (if any) and shall offer to the persons interested compensation in respect thereof, and, in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

6. Objections to acquisition :—(1) Any person interested in any land which has become vested in the [State]* Government under section 5 may, within one month from the vesting thereof, file his objection, if any, to the acquisition before the competent authority and such authority may, after making such enquiry as it thinks fit, either dismiss the objection or release the land in respect of which objection has been filed from acquisition.

(2) If any land is released from acquisition under sub-section (1), it shall be deemed to revert in the person originally entitled thereto and any encumbrance which may have been extinguished under section 5 shall revive.

(3) The provisions of sub-sections (1) and (2) shall not apply where in respect of any notification or notice referred to in sub-section (2) of section 3 or section 4 proceedings have been commenced or action has been taken prior to the commencement of this Act, under sub-section (2) of section 5-A of the Land Acquisition Act, 1894.

¹[6-A. Withdrawal from acquisition :—(1) The State Government shall be at liberty to withdraw from acquisition of any land of which possession has not been taken.

(2) Whenever the State Government withdraws from any such acquisition, the competent authority shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested

* Substituted by the Aaptation of Laws Order, 1950, for "Provincial".

¹ Inserted by the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) (Amendment) Act, 1950 (Or. Act XVII of 1950), s. 4.

together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of section 7 of this Act shall apply so far as may be, to the determination of the compensation payable under this section;

7. Method of determining compensation :—(1) Where any land has been acquired under this Act, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say—

- (a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement ;
- (b) where no such agreement can be reached the [State]¹ Government shall appoint as arbitrator a person qualified for appointment as a Judge of a High Court ;
- (c) the [State]¹ Government may, in any particular case, nominate a person having expert knowledge as to the nature and condition of the land acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose ;
- (d) at the commencement of the proceedings before the arbitrator the [State]¹ Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation ;
- (e) the arbitrator in making his award, shall have due regard to the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894.

Provided that the market value referred to in the first clause of sub-section (1) of section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice under section 3, or as the case may be, the preliminary notification under sub-section (1) of section 4 of the Land Acquisition Act, 1894, referred to under sub-section (2) of section 3 or on the first day of September 1939, with an addition of fifty per cent, whichever is less :

Provided further that where under any law or custom having the force of law the lands are not saleable, the market value of such lands shall be such multiple as may be prescribed of the deduced rent to be calculated in the prescribed manner with addition of fifty per cent :

Provided further that where such land has been held by the owner thereof under a purchase made before the 1st day of October 1948, or as the case may be, the date of publication of the preliminary notification under section 4 of the Land Acquisition Act, 1894 (I of 1894), referred to in sub-section (2) of section 3, but after the first day of September 1939, by a registered document, or a decree for pre-emption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land in the decree for pre-emption, as the case may be.

¹ Substituted by the Adaptation of Laws Order, 1950, for "Provincial".

(2) The arbitrator shall, in awarding any compensation under this section, apportion the amount thereof between such persons, if any, as may appear to him to be entitled thereto.

(3) An appeal shall lie to the High Court from the award of the arbitrator appointed under this Act, and the decision of the High Court shall be final.

*[(4) (a) Every award shall also state the amount of costs incurred in the proceedings and by what persons and in what proportions they are to be paid.

(b) When the award of the arbitrator is not upheld, the costs shall ordinarily be paid by the State Government, unless the appellate authority shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the arbitrator that some deduction from his costs should be made or that he should pay a part of the arbitrator's cost.]

8. Payment of compensation :—The compensation awarded shall be paid by the competent authority to the person entitled thereto according to the award :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

9. Power to secure information :—The [State]¹ Government or the competent authority may, with a view to determining the compensation payable under this Act, by order require any person to furnish to such authority as may be specified in the order such information in his possession relating to the land that may be so specified.

10. Disposal of land :—Subject to such rules as may be made by the [State]¹ Government, the competent authority may use or deal with any land acquired under the provisions of this Act in such manner and subject to such conditions as may appear to it to be expedient.

11. Penalties :—Whoever wilfully obstructs any person in lawfully taking possession of any land under this Act or refuses to furnish any information as required by section 9 shall be punishable with imprisonment which may extend to one month or with fine which may extend to fifty rupees or with both.

12. Application of section 31 of Act I of 1894 :—The provisions of section 31 of the Land Acquisition Act, 1894 (I of 1894), shall apply in respect of the stamp duty chargeable on award or agreement made under this Act.

13. Protection for action done in good faith :—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

14. Power to make rule :—(1) The [State]¹ Government may make rules to carry out the objects of this Act and for the guidance of officers in all matters connected with its enforcement.

* Inserted by the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) (Amendment) Act, 1950 (Or. Act XVII of 1950) s. 5.

¹ Substituted by the Adaptation of Laws Order, 1950, for "Provincial".

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the manner in which land acquired under this Act may be used or dealt with ;
- (b) the procedure to be followed in arbitrations under this Act ;

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²[(c)] the principles to be followed in determining the mode of fixing and the mode of payment of compensation as respects different classes of or different descriptions of interest held in lands or the manner in which deduced rent in respect of non-saleable lands are to be calculated ;

²[(d)] preparation of a record under sub-section (3) of section 5.

Orissa (2)

THE LAND ACQUISITION (ORISSA AMENDMENT AND VALIDATION) ACT NO. 19 OF 1959

The following Act of the Orissa Legislative Assembly has been assented to by the President on the 17th October, 1959 and was published in the Orissa Gazette, Extra-ordinary No. 630 dated November 4, 1959.

An Act to Amend the Land Acquisition Act, 1894 and to validate the Acquisition of Lands made for certain purposes in the State of Orissa.

WHEREAS, doubts having arisen in respect of certain acquisitions made for industrial development in the State of Orissa, it is expedient to amend the Land Acquisition Act, 1894 (Act 1 of 1894) and to validate such acquisitions in the manner hereinafter appearing ;

It is hereby enacted by the Legislature of the State of Orissa in the Tenth Year of the Republic of India as follows :—

1. Short title and commencement :—(1) This Act may be called the Land Acquisition (Orissa Amendment and Validation) Act, 1959.

(2) It shall come into force at once.

Notes

Object :—Section 17 of the Land Acquisition Act 1894 as it stands now provides for speedy acquisition of those lands only which fall in the category of waste or arable land, But where any other type of land such as homestead or orchard land is required to be speedily acquired under the provisions of

¹ Clause (c) repealed by the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) (Amendment) Act, 1950 (Or. Act XVII of 1950), s. 6 (1).

² Clauses (d) and (e) relettered as (c) and (d) respectively by *ibid*, s. 6 (2).

the said Act it is not possible to take recourse to the provisions of the said section. It is therefore, felt necessary to amend it so as to bring all types of land within its purview.

In view of certain decisions of Courts, opportunity is also taken to validate certain acquisitions made for some companies under the Orissa Act 18 of 1948 and to provide for the continuance of the said acquisition proceedings under the Central Act (vide Statement of Objects and Reasons, printed in Orissa Gazette, Extra-ordinary, No. 540 dated August 25, 1959).

2. Definitions.—In this Act unless the context otherwise requires—

(1) “Central Act” means the Land Acquisition Act, 1894 (Act 1 of 1894) ;

(2) “Orissa Act” means the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Re-settlement of Displaced persons (Land Acquisition) Act 1948 (Orissa Act 18 of 1948);

(3) “Schedule” means the schedule appended to this Act ;

(4) The words “Collector” and “Company” shall have the same meanings as have been respectively assigned to them in the Central Act.

3. Amendment of section 17 Act I of 1894 :—In section 17 of the Central Act—

(i) in sub-section (1) the words “waste or arable” shall be omitted.

(ii) in sub-section (4) for the words “in the case of any land to which” the words “in cases where” shall be substituted.

4. Validation of certain acquisitions made under Orissa Act 18 of 1908 :—Notwithstanding anything in any law for the time being in force or in any judgement decree or order of any Court, in respect of proceedings for the acquisition of land under the Orissa Act as specified in the schedule—

(a) any notification published under sub-section (1) of section 3 of the Orissa Act, read with the corresponding notification under clause (c) of section 2 thereof, shall be deemed to be a notification issued by the State Government to the effect that land in the locality specified in the notification was needed for a public purpose and for the company specified therein within the meaning of section 4 of the Central Act and shall have the same force and effect as fully and effectively as if the particular land had been declared under section 6 of the Central Act to have been needed for the said company ;

(b) any steps taken, things done, notices issued and procedure followed under the sub-sections (2) and (3) of section 3 of the Orissa Act shall be deemed to have been taken, done, issued, and followed in pursuance of sections 5, 7, and 8 of the Central Act ;

(c) where a notice of acquisition has been served or published under section 4 of the Orissa Act such lands shall be deemed to have been validly vested in the State Government and if possession has been taken thereof such possession shall be deemed to have been validly taken, in the same manner, to the same extent and with same force and effect as if such vesting and taking of such possession had been in pursuance of section 17 of the Central Act as amended by this Act ;

Provided the Collector shall within thirty days of the date of commencement of this Act call upon the owner, occupier and persons interested in

the lands for purposes specified in sub-section (3) of section 9 and 10 of the Central Act and so far as may be, in the manner laid down therein ;

- (d) The provisions of section 39 and 40 of the Central Act shall be deemed to have been fully complied with ; Provided that the agreements with the companies, for which the acquisitions had been made, shall within a period of six months from the date of commencement of this Act be executed and published in accordance with the provisions of section 42 of the Central Act ; and
- (e) subject to the provisions contained in the foregoing clauses, in respect of all matters relating to such acquisitions as are validated thereunder, the provisions of the Central Act shall so far as may be apply and proceedings pending before the competent Authority or the Arbitrator appointed under the Orissa Act shall respectively stand transferred to and be disposed of by the Collector or the Court as the case may be, as defined in the Central Act ;

Provided that where possession of the lands has not been taken in pursuance of section 5 of Orissa Act steps shall be taken in accordance with the procedure laid down in section 9 of the Central Act and the provisions of section 17 of the said Act shall thereafter apply.

Schedule

1. Acquisition of lands for Kalinga Industries Ltd., for the establishment of a Low shaft furnace at Barbil in the District of Keonjhar.
2. Acquisition of lands for the Indian Aluminium Co. Ltd., for the establishment of Aluminium Industry in village Jamda in the district of Sambalpur.
3. Acquisition of lands for Titagarh Paper Mills Ltd., for the establishment of a Paper Mill at Chowdhar in the District of Cuttack.
4. Acquisition of lands for M/s. Orissa Cement Ltd., for the construction of staff quarters at Rajganjpur in the District of Sundergarh.
5. Acquisition of lands for Swastika Rice Mill at Byree in the District of Cuttack.
6. Acquisition of lands for Tata Iron and Steel Co. Ltd., for the establishment of Ferro Manganese plant at Joda and Banaikala in the District of Keonjhar.
7. Acquisition of land for the construction of assisted seding for the development in Orient Colliery at Brajarajnagar in the District of Sambalpur.

Orissa (3)

ORISSA REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY (Amendment) ACT NO. 6 OF 1962

* * * *

2. Amendment of Section 1 of Orissa Act 29 of 1952 :—In sub-section (3) of section 1 of the Orissa Requisitioning and Acquisition of Immovable

Property Act, 1952 (Orissa Act 29 of 1952), for the words "nine years" the words "twelve years" shall be substituted.

3. Repeal and savings :—(1) The Orissa Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance 1962 (Orissa Ordinance No. I of 1962) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken in exercise of any of the powers conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken.

Orissa (4)

THE ORISSA REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY (Amendment) ACT NO. 14 OF 1965

Amendment of section I of Orissa Act 20 of 1962 :—In section 1 of the Orissa Requisitioning and Acquisition of Immovable Property Act 1962 (Orissa Act 20 of 1962), in sub-section (4) for the words "three years" the words "six years" shall be substituted and shall be deemed always to have been substituted.

Orissa (5)

THE ORISSA LAND REFORM (Amendment) ACT NO. 13 OF 1965

(Extracts)

* * * *

CHAPTER III

Resumption of land for personal cultivation

24. Resumption of tenanted lands :—(1) Notwithstanding anything to the contrary in Chapter II, but subject to the conditions, limitations and restrictions hereinafter specified the landlord and the tenant shall have the right to the determination of the resumable and non-resumable lands in accordance with the provisions of this Chapter and for the purposes thereof.

Explanation.—Resumable land refers to the land which can be resumed for personal cultivation by a landlord from a tenant.

(2) Nothing in this Chapter shall apply in respect of lands held by a landlord who on the commencement of this Act is a privileged rayat or a person under disability.

25. Extent of resumable land :—The extent of resumable lands shall not be more than one half of the lands in respect of each tenant, measured in standard acres only.

* * * *

28. Compensation for non-resumable lands :—(1) While deciding matters under section 27 the Revenue Officer shall further determine the

compensation in respect of non-resumable lands payable in the prescribed manner by the tenant which shall be determined in accordance with the following sub-sections :—

(2) The compensation for the land shall be ten times the fair rent for the land to be paid in five annual instalments with interest at the rate of four and half per centum per annum of the unpaid balance, the first instalment falling due on such date as the Revenue Officer may in his order specify in that behalf.

Provided that no compensation payable under this sub-section shall in no event exceed fifty per centum of the market value of the land ;

Provided further that where the tenant pays up the entire compensation amount on or before the date on which the payment of the first instalment falls due he shall be entitled to a rebate of five per centum per annum of the compensation amount.

(3) The compensation payable for—

(a) wells, tanks and structures of a permanent nature situate in the land and not constructed by or at the cost of the tenant ; and

(b) trees standing on the land ;

shall be the market value thereof to be paid along with the compensation under sub-section (2).

Explanation.—In determining the market value the Revenue officer shall, as far as practicable be guided by the provisions contained in sub-section (1) of section 23 of the Land Acquisition Act 1894 (1 of 1894).

CHAPTER IV

Ceiling and disposal of surplus land

45. Surplus land to vest in Government :—With effect from the beginning of the year next following the date of the final statement referred to in sub-section (3) of section 44 the interests of the person to whom the surplus lands relate and of all landholders mediately under whom the surplus lands were being held shall stand extinguished and the said lands shall vest absolutely in the Government free from all encumbrances.

46. Compensation Assessment Roll to be prepared :—As soon as may be after the date of the aforesaid final statement the Revenue officer shall determine the compensation amounts under section 47 and after deducting therefrom all rents, revenues, cesses, rates and other dues payable to Government in respect of the land, apportion the same in accordance with the compensation Assessment Roll published under section 49 between the persons interested.

47. Principles to determine compensation :—(1) The compensation in respect of the interest of the landholders mediately or immediately under whom the surplus lands were being held as a landholder or rayat shall be fifteen times the fair and equitable rent.

(2) The amount of compensation in respect of the interest of the person to whom the surplus lands relate shall be the aggregate of the following :—

(a) market value of tanks, walls, and structures of a permanent nature situate in the land.

- (b) market value of trees standing on the land ; and
- (c) value of land to be determined on the basis of fair rent in the following manner, namely—

<i>Fair Rent</i>	<i>Rate of compensation</i>
(i) for the first 200 standard maunds of fair rent.	10 times the cash equivalent of such rent.
(ii) on the next 200 standard maunds of fair rent.	8 times the cash equivalent of such rent.
(iii) on next 200 standard maunds of the fair rent.	7 times the cash equivalent of such rent.
(iv) on the balance of the fair rent.	5 times the cash equivalent of such rent.

Explanation.—In determining the market value the Revenue Officer shall, as far as practicable be guided by the provisions contained in sub-section (1) of section 23 Land Acquisition Act.

Orissa (6)

ORISSA LAND REFORMS (Amendment) ACT 1966 ORISSA ACT 8 OF 1967

(Published in Orissa Gazette Extraordinary, dated June 1, 1966).

An Act to amend the Orissa Land Reforms Act, 1960.

1. Short title :—This Act may be called the Orissa Land Reforms (Amendment) Act, 1966.

2. Amendment of section 4 Orissa Act 16 of 1960 :—In section 4 of the Orissa Land Reforms Act 1960 (Orissa Act 16 of 1960) hereinafter referred to as the principal Act.

- (i) after sub-section (2) the following provisions shall be inserted, namely :—

“Provided that any such person as aforesaid, who has failed to make an application within the said period, may make such application within ninety days from the date of commencement of the Orissa Land Reforms (Amendment) Act 1966.

Provided further that any such application made after the expiry of the period specified in this sub-section and before the aforesaid date shall, for all purposes, be treated as an application filed within the period of limitation”.

- (ii) after sub-section (5) the following provisos shall be inserted namely :—

“Provided that any such sub-tenant or under-rayat who has failed to make an application within said period, may make such an application within ninety days from the date of commencement of the Orissa Land Reforms (Amendment) Act, 1966.

Provided further that any such application made after the expiry of the period specified in this sub-section and before the aforesaid date shall, for all purposes, be treated as an application filed within the period of limitation”.

3. Amendment of Section 26, Orissa Act 16 of 1960 :—In section 26 of the principal Act, after sub-section (2) the following provisos shall be added, namely :—

Provided that any landlord or tenant who has failed to apply within the aforesaid period, may make such application within three months from the date of commencement of the Orissa Land Reforms (Amendment) Act 1966.

Provided further that any such application made after the expiry of the period specified in sub-section (1) or sub-section (2) and before the aforesaid date, shall for all purposes, be treated as an application filed within the period of limitation”.

4. Amendment of Section 27 of the Orissa Act 16 of 1960 :—In section 27 of the principal Act, in sub-section (1) for the words and figures “on the expiry of the period specified in section 26, consider the application received thereunder” the words and figures “on receipt of application from the landlord under section 26, consider it along with such application, if any, as may have been received from his tenant under the said section” shall be substituted.

5. Insertion of new section 34A, Orissa Act 16 of 1960 :—After section 34 of the principal Act the following new section shall be inserted namely :—

34-A. Consequence of failure of landlord to apply under section 26 :—In any case when the landlord in respect of any land fails to apply in accordance with the provisions of section 26 the Revenue Officer shall, on the expiry of the period specified in the said section, consider the application filed by the tenant in respect of such land and after giving the persons interested an opportunity of being heard determine the particulars of the resumable and non-resumable lands along with the other matters required to be determined under sections 27 and 28 and on such determination the remaining provisions of the Chapter, so far as may be, shall apply.

Provided that if in any such case the landlord contests the claim on the ground that the applicant is not the tenant and the tenant succeeds in establishing his claim, the Revenue Officer shall, after giving the tenant an opportunity of selecting the non-resumable lands determine the aforesaid particulars, so far as may be, in accordance with the selection, if any, made by the tenant.

Provided further that if the landlord does not contest the claim as aforesaid he shall have the right to select the resumable lands and the said particulars shall, so far as may be, determined in accordance with the selection, if any, made by the landlord”.

6. Insertion of new Section 35-A, Orissa Act 16 of 1960 :—After section 35 of the principal Act the following new section shall be inserted namely :—

“35-A. Rights of tenant until conclusion of proceedings under the Chapter :—The tenant shall subject to the final orders made in the proceedings, if any under this chapter, hold the land as a tenant with heritable right until the conclusion of such proceedings and while so holding shall be subject to the provisions contained in Chapter II”.

PART III

CHAPTER XII

Punjab (1)

THE PUNJAB REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY ACT NO. XI OF 1953

Punjab Act No. XI of 1953.

Received the assent of the President on the 15th April, 1953, and was first published in the Punjab Government Gazette (Extraordinary) of the 15th April, 1953;

An Act to provide for the requisitioning and acquisition of immovable property for the purposes of the State.

It is hereby enacted as follows :—

1. Short title, extent and duration :—(1) This Act may be called the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953.

(2) It extends to the whole of the State of Punjab.

(3) It shall remain in force for a period of five years from the date of the commencement of this Act.

2. Definitions :—In this Act, unless the context otherwise requires,—

(a) “award” means any award of an arbitrator made under section 8 ;

(b) “competent authority” means any person or authority authorised by the State Government, by notification in the official Gazette to perform the functions of the competent authority under this Act for such area as may be specified in the notification.

(c) “landlord” means any person who for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account, or on account or on behalf or for the benefit, of any other person or as a trustee, guardian or receiver for any other person, or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant ;

(d) the expression “person interested”, in relation to any property, includes all persons claiming or entitled to claim, an interest in the compensation payable on account of the requisitioning or acquisition of that property under this Act ;

(e) “premises” means any building or part of a building and includes :—

(i) the garden, grounds and outhouses, if any appertaining to such building or part of a building ;

¹ For Statement of Objects and Reasons, see *Punjab Government Gazette* (Extraordinary), dated 13th March, 1953, p. 323 ; for proceedings in the Assembly, see *Punjab Legislative Assembly Debates*, 1953.

- (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof ;
- (f) "prescribed" means prescribed by rules made under this Act ;
- (g) "property" means immovable property of every kind and includes any rights in or over such property ;
- (h) "tenant" means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have derived title under the tenant under any law for the time being in force.

3. Power to requisition immovable property :—(1) Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the State, and that the property should be requisitioned, the competent authority—

- (a) shall call upon the owner or any other person who may be in possession of the property by notice in writing (specifying therein the purpose of the requisition) to show cause, within fifteen days of the date of the service of such notice on him, why the property should not be requisitioned ; and
- (b) may, by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority dispose of, or structurally alter, the property or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order.

(2) If, after considering the cause, if any, shown by any person interested in the property, or in possession thereof, the competent authority is satisfied that it is necessary or expedient so to do, it may by order in writing requisition the property and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning :

Provided that no property or part thereof—

- (a) which is *bona fide* used by the owner thereof as the residence of himself or his family, or
- (b) which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purposes of accommodation of persons connected with the management of such place of worship or such school, hospital, library or orphanage,

shall be requisitioned :

Provided further that where the requisitioned property consists of premises which are being used as a residence by a tenant for not less than two months immediately preceding the date of the service of notice under sub-section (1), possession of the property shall not be taken unless the competent authority has provided such tenant with alternative accommodation which, in its opinion is suitable.

4. Power to take possession of requisitioned property :—(1) Where any property has been requisitioned under section 3, the competent authority may, by notice in writing, order the owner as well as any other person who may be in possession of the property to surrender or deliver possession

thereof to the competent authority or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may, for that purpose, use such force as may be necessary.

5. Rights over requisitioned property :—(1) All property requisitioned under section 3, shall be used for such purposes, as may be mentioned in the notice of requisition.

(2) Where any premises are requisitioned under section 3, the competent authority may order the landlord to execute such repairs as may be necessary and are usually made by landlords in that locality and as may be specified in the notice, within such reasonable time as may be mentioned therein and if the landlord fails to execute any repairs in pursuance of such order, the competent authority may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery be deducted from the compensation payable to the landlord.

6. Release from requisitioning :—(1) The competent authority may at any time release from requisition any property requisitioned under this Act and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force :

Provided that where the purposes for which any requisitioned property was being used cease to exist the competent authority shall, unless property is acquired under section 7, release that property, as soon as may be from requisition.

(2) Where any property is to be released from requisition, the competent authority may, after such inquiry, if any, as it may in any case consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person from whom possession was taken at the time of the requisition or to the successors-in-interest of such person.

(3) The delivery of possession of the property to the person specified in an order under sub-section (2) shall be a full discharge of the State Government from all liability in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is given.

(4) Where any person to whom possession of any requisitioned property is to be given is not found and has no agent or other person empowered to accept delivery on his behalf, the competent authority shall cause a notice declaring that the property is released from requisition to be affixed on some conspicuous part of the property and shall also publish the notice in the official Gazette.

(5) When a notice referred to in sub-section (4) is published in the official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof and the

State Government shall not be liable for any compensation or other claim in respect of the property for any period after the said date.

(6) Where any property requisitioned under this Act or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was requisitioned by reason of fire, earthquake, tempest, flood, or violence of an army or of a mob or other irresistible force, the requisition shall, at the option of the State Government, be void.

Provided that the benefit of this sub-section shall not be available to the State Government where the injury to such property is caused by any wrongful act or default of that Government.

7. Power to acquire requisitioned property :—(1) Where any property is subject to requisition, the State Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, at any time acquire such property by publishing in the official Gazette a notice to the effect that the State Government has decided to acquire the property in pursuance of this section :

Provided that before issuing such notice the State Government shall call upon the owner of, or any other person who, in the opinion of the State Government may be interested in such property, to show cause why the property should not be acquired ; and after considering the cause, if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the State Government may pass such order as it deems fit.

(2) When a notice as aforesaid is published in the official Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such property shall end.

(3) No property shall be acquired under this section except in the following circumstances, namely :—

(a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the State Government, and the Government decides that the value of, or the right to use, such works should be secured or preserved for the purposes of Government ; or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the State Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property.

(4) Any decision or determination of the State Government under sub-section (3) shall be final and shall not be called in question in any court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvements of every description.

8. Principles and methods of determining compensation :—(1) Where any property is requisitioned or acquired under this Act, there shall be given compensation which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say :—

- (a) where the compensation can be fixed by agreement it shall be given in accordance with such agreement ;
- (b) where no such agreement can be reached, the State Government shall appoint as arbitrator a person, who is, or has been, or is qualified for appointment as a Judge of a High Court ;
- (c) the State Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired, to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose ;
- (d) at the commencement of the proceedings before the arbitrator, the State Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation ;
- (e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid ; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable ;
- (f) where there is any dispute as to the person or persons who are entitled to the compensation the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons ;
- (g) nothing in the Arbitration Act, 1940 (X of 1940) shall apply to arbitrations under this section.

(2) The compensation for the requisitioning of any property shall consist of :—

- (a) a recurring payment, in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period ; and
- (b) such sum, or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely—
 - (i) pecuniary loss due to requisitioning ;
 - (ii) expenses on account of vacating the requisitioned premises ;
 - (iii) expenses on account of re-occupying the premises upon release from requisition ; and
 - (iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.

(3) Where any property is acquired in connection with the new Capital of the State of Punjab compensation may be paid, whether by agreement or by award of the arbitrator, either in money or in kind or partly in money and partly in kind, and where there is no person competent to alienate the property or there is a person with limited interest in such property or there

is any dispute as to the persons entitled to receive the compensation or as to the apportionment thereof, the arbitrator shall make an award in such manner or make an arrangement in such a way as may be equitable having regard to the interests of the persons concerned.

(4) The compensation for the acquisition of any property under section 7, in the absence of an agreement, shall be—

(a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less.

(5) Where there are several persons interested in the compensation, it shall be lawful for the State Government, either on its own motion, or on an application from any person interested to appoint the same or any other arbitrator to make an award or supplementary award in respect of the dispute.

9. Payment of compensation :—The amount of compensation under an award shall, subject to any rules made under this Act, be paid or given by the competent authority to the person or persons entitled thereto in such manner and within such time as may be specified in the award.

10. Appeals from orders of requisitioning :—(1) Any person aggrieved by an order of requisition made by the competent authority under sub-section (2) of section 3 may, within twenty-one days from the date of service of the order, prefer an appeal to the State Government :

Provided that the State Government may entertain the appeal after the expiry of the said period of twenty-one days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the State Government may, after calling for a report from the competent authority and giving an opportunity to the parties of being heard and after making such further inquiry, if any, as may be necessary, pass such orders as it thinks fit and the order of the State Government shall be final.

(3) Where an appeal is preferred under sub-section (1), the State Government may stay the enforcement of the order of the competent authority for such period and on such conditions as it thinks fit.

11. Appeals from awards in respect of compensation :—Any person aggrieved by an award of the arbitrator made under section 8 may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situate :

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

12. Competent authority and arbitrator to have certain powers of civil courts :—The competent authority and the arbitrator appointed under section 8 while holding an inquiry or as the case may be, arbitration proceedings under this Act, shall have all powers of a civil court, while trying

a suit, under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of any document ;
- (c) reception of evidence on affidavits ;
- (d) requisitioning any public record from any court or office ;
- (e) issuing commissions for examination of witnesses.

13. Power to obtain information :—The State Government or the competent authority may, with a view to carrying out the purposes of section 3 or section 6, or section 7 or section 8, by order require any person to furnish to such officer, as may be specified in the order, such information in his possession as may be specified relating to any property which is requisitioned or acquired, or intended to be requisitioned or acquired, under this Act.

14. Power to enter and inspect :—The competent authority or any officer, empowered in this behalf by such authority by general or special order, may enter and inspect any property for the purposes of determining whether, and if so, in what manner an order under this Act should be made in relation to such property or with a view to securing compliance with an order made under this Act.

15. Service of notice and orders :—(1) Subject to the provisions of this section and any rules that may be made under this Act, every notice or order issued or made under this Act shall—

- (a) in the case of any notice or order of a general nature or affecting a class of persons be published in the official Gazette ; and
- (b) in the case of any notice or order affecting an individual corporation or firm, be served in the manner provided for the service of summons in Rule 2 of Order XXIX or Rule 3 of Order XXX, as the case may be, in the first Schedule of the Code of Civil Procedure, 1908 (Act V of 1908) ; and
- (c) in the case of any notice or order affecting an individual person (not being a corporation or firm) be served on such person—
 - (i) by delivering or tendering it to that person ; or
 - (ii) if it can be delivered or tendered, by delivering or tendering it to any officer of such person or any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part on the premises in which that person is known to have last resided or carried on business or personally worked for gain ; or failing service by these means,
 - (iii) by post.

(2) Where the ownership of the property is in dispute or where the persons interested in the property are not readily traceable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in the official Gazette, and where possible, by affixing a copy thereof on any conspicuous part of the property to which it relates.

16. Easement not to be disturbed :—No person interested in any property requisitioned or acquired under this Act shall, without the previous written

consent of the competent authority or except for the purposes of affecting repairs or complying with a municipal requirement, wilfully disturb any convenience or easement attached to such property or remove, destroy or render unserviceable anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the property.

17. Delegation of powers :—(1) The State Government may, by notification in the official Gazette, direct that the powers exercisable by it by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercisable also by an officer subordinate to that Government.

(2) All notifications issued under sub-section (1) shall be laid, as soon as may be, before both the houses of the State Legislature.

18. Protection of action taken in good faith :—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

(2) No suit or other legal proceeding shall lie against the State Government or the competent authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

19. Bar of jurisdiction of civil courts :—Save as otherwise expressly provided in this Act no civil court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

20. Penalty for offences :—Whoever contravenes any provision of this Act, or any rule made thereunder, or any order made or direction given under this Act, or obstructs the lawful exercise of any power conferred by or under this Act, shall be punishable with fine which may extend to one thousand rupees.

21. Certain persons to be public servants :—The competent authority, every arbitrator and every officer empowered by the State Government or the competent authority, while exercising any power or performing any duty under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

22. Power to make rules :—(1) The State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the procedure to be followed by the competent authority in making inquiries under section 3 or section 6 ;

(b) the procedure to be followed in arbitration proceedings and appeals under this Act ;

- (c) the principles to be followed in determining the compensation and method of rendition of such compensation ;
- (d) the principles to be followed in apportioning the cost of proceedings before the arbitrator and on appeal under this Act ;
- (e) the manner of service of notices and orders ;
- (f) any other matter which has to be, or may be, prescribed.

(3) All rules made under the provisions of this Act shall be laid, as soon as may be, before both the houses of the State Legislature.

23. Validation of certain requisitions and acquisitions :—(1) All immovable property which purports to have been requisitioned by the State Government for any public purpose, under any law in force prior to the commencement of this Act, and which, immediately before such commencement, was used or occupied by the State Government or by an officer or authority subordinate to that Government shall, as from the commencement of this Act, be deemed to be property duly requisitioned under section 3 of this Act, and every such requisition shall, notwithstanding any judgment, decree or order of any court, be deemed always to have been valid as if this Act had been in force on and from the date of the requisition and the requisition had been duly made by a competent authority under this Act, and all the provisions of this Act shall apply accordingly :

Provided that all agreements and awards for the payment of compensation, in respect of any such property for any period of requisition before the commencement of this Act and in force immediately before such commencement shall be valid and shall be deemed always to have been valid and shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition after such commencement.

(2) Every acquisition of immovable property purporting to have been made before the commencement of this Act by the State Government for any public purpose, under any enactment for the time being in force in the State and which, immediately before such commencement was used or occupied by the State Government or by an officer or authority subordinate to that Government shall, notwithstanding any defect in, or invalidity of, the enactment or order under which the acquisition was made, be deemed for all purposes to have been validly made as if the provisions of the said enactment or order had been included and enacted in this section and this section had been in force on and from the date of the acquisition.

24. Power to recover rent or damages in respect of requisitioned property as arrears of land revenue :—(1) Subject to any rules that may be made in this behalf by the State Government any sum due by way of rent in respect of any requisitioned property which is in arrear may be recovered by the competent authority from the person liable to pay the same in the same manner as an arrear of land revenue.

(2) Where any person is in unauthorised occupation of any requisitioned property, the competent authority may, in the prescribed manner, assess such damages on account of the use and occupation of the said property as it thinks fit and may, by notice served by post or in such other manner, as may be

prescribed by rules made in this behalf, order that person to pay the damages within such time as may be specified in the notice.

(3) If any person refuses or fails to pay the damages within the time specified in the notice under sub-section (2), the damages may be recovered in the same manner as an arrear of land revenue.

25. Repeals and savings :—(1) The East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948 (East Punjab Act No. XLVIII of 1948), and the Punjab Requisitioning of Immovable Property (Amendment and Validation) Act, 1951 (President's Act No. II of 1951), are hereby repealed.

(2) For the removal of doubts, it is hereby declared that any property which immediately before such repeal was subject to requisition under the provisions of either of the said Acts shall, on the commencement of this Act, be deemed to be property requisitioned under section 3 of this Act, and all the provisions of this Act shall apply accordingly :

Provided that—

(a) all agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Act and in force immediately before such commencement, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition after such commencement ;

(b) anything done or any action taken (including any orders, notifications or rules made or issued) in exercise of the powers conferred by or under either of the said Acts shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such thing was done or action was taken.

Punjab (2)

THE PUNJAB REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY (Haryana Amendment) ACT, 1968

President's Act No. 9 of 1968.

Enacted by the President in the Nineteenth year of the Republic of India.

An Act to amend the Punjab Requisitioning and Acquisition of Immovable Property Act 1953.

In exercise of the powers conferred by section 3 of the Haryana State Legislature (Delegation of Powers) Act 1967 (30 of 1967) the President is pleased to enact as follows :—

1. Short title :—This Act may be called the Punjab Requisitioning and Acquisition of Immovable Property (Haryana Amendment) Act, 1968.

2. Amendment of Section 1 :—In sub-section (3) of section 1 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953

(Punjab Act XI of 1953), for the word "fifteen", the word "twenty" shall be substituted.

Punjab (3)

THE PUNJAB MUNICIPAL ACT (III OF 1911)

(Extracts)

58. Acquisition of land :—When any land, whether within or without the limit of a municipality, is required for the purposes of this Act, the Provincial Government may, at the request of the committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and on payment by the committee of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the committee.

Explanation.—When any land is required for a new street or for the improvement of an existing street, the committee may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings to be erected on both sides of the street, and such land shall be deemed to be required for the purposes of this Act.

Punjab (4)

THE PUNJAB TOWN IMPROVEMENT ACT (IV OF 1922)

(Extracts)

56. Abandonment of acquisition in consideration of special payment :—

(1) Wherever in any locality comprised in any scheme under this Act, the Provincial Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme, the owner of such land, or any person having an interest therein, may make an application to the Trust requesting that the acquisition of such land be abandoned in consideration of the payment by him of a sum to be fixed by the Trust in that behalf.

(2) The Trust shall admit every such application if it—

(a) reaches it before the time fixed by the Collector, under Sec. 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by any person who either owns the lands, is mortgagee thereof, holds a lease thereof, with an unexpired period of seven years.

(3) The Trust may admit any such application presented by any other person having an interest in the land.

(4) On the admission by the Trust of any such application, it shall forthwith inform the Collector, and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and

the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(5) Within the said period of three months, or, with the permission of the Trust at any time before the Collector has taken possession of the land under sec. 16 of the Land Acquisition Act, 1894, the person from whom the Trust has agreed to accept the sum so fixed may, if the Trust is satisfied that the security offered by him is sufficient, execute an agreement with the Trust, either—

- (i) to pay the said sum three years after the date of the agreement, or
- (ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment of interest at a rate to be agreed upon by such person and the Trust until the said sum has been paid in full and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the Trust may, at any time before the Collector has taken possession of the land under sec. 10 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(6) When any agreement has been executed in pursuance of sub-section (5) or when any payment has been accepted in pursuance of the proviso to that sub-section in respect of any land, proceedings for the acquisition of the land shall be deemed to be abandoned.

(7) Every payment due from any person under any agreement executed under sub-section (5) shall be a charge on the interest of that person.

(8) If any instalment of interest payable under an agreement executed in pursuance of clause (i) of sub-section (5) be not paid on the due date, the sum fixed by the Trust under sub-section (4) shall be payable on that date, in addition to the said instalment.

(9) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (5), any person may pay in full the charge created thereby with interest, at the agreed rate, up to the date of such payment.

(10) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5), no suit with respect to such agreement shall be brought against the Trust by any other person (except an heir, executor, or administrator of the person first aforesaid) claiming to have an interest in the land.

(11) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5) and any sum payable in pursuance of that sub-section is not duly paid, the same shall be recoverable by the Trust (together with interest, up to the date of realization, at the agreed rate), from the said person or his successor-in-interest in such land in the manner provided by sec. 222 of the Municipal Act, and, if not so recovered, the the Chairman may, after giving public notice of his intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

57. Agreement or payment under sec. 56 not a bar to acquisition under a fresh declaration :—If any land in respect of which an agreement has been executed or a payment has been made in pursuance of sub-section (5) of sec. 56 is subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under sec. 6 of the Land Acquisition Act, 1894.

58. Tribunal to be constituted :—A Tribunal shall be constituted as provided in sec. 60, for performing the function of the Court in reference to the acquisition of land for the Trust under the Land Acquisition Act, 1894.

59. Modification of the Land Acquisition Act, 1894 :—For the purpose of acquiring land under the Land Acquisition Act, 1894, for the Trust—

- (a) The Tribunal shall (except for the purposes of sec. 54 of the said Act) be deemed to be the Court and the President of the Tribunal shall be deemed to be the Judge, under the said Act ;
- (b) the said Act shall be subject to the further modifications indicated in the Schedule to this Act ;
- (c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and
- (d) the award of a Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be final.

60. Constitution of Tribunal :—(1) The Tribunal shall consist of a President and two assessors.

(2) The President of the Tribunal shall be either—

- (a) a member of the Judicial Branch of the Indian or Punjab Civil Service of not less than ten years' standing in such service who has for at least three years served as District Judge or for at least five years held Judicial Office not inferior to that of a Senior Subordinate Judge ; or
- (b) a barrister, advocate or pleader of not less than ten years' standing who has practised as an Advocate or Pleader in the High Court of Judicature at Lahore.

(3) The President of the Tribunal and one of the assessors shall be appointed by the Provincial Government and the other assessor shall be appointed by the Municipal Committee, or in default of appointment by the Municipal Committee within two months of their being required by the Provincial Government to make such appointment by the Provincial Government :

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or would, if he were a Trustee, be liable to removal by the Provincial Government under sec. 10.

(4) The term of office of each member of the Tribunal shall be two years, but any member shall, subject to the proviso to sub-section (3), be eligible for re-appointment at the end of that term.

(5) The Provincial Government may remove any member of the Tribunal who would if he were a Trustee be liable to removal by the Provincial Government under sec. 10.

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any unavoidable cause, the authority which appointed him shall forthwith appoint a fit person to be a member in his place. Where the authority so appointing was the Municipal Committee and the Municipal Committee fails to make a fresh appointment within two months of being required to do so by the Provincial Government the appointment may be made by the Provincial Government.

61. Remuneration of members of Tribunal :—Each member of the Tribunal shall receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the Provincial Government may prescribe.

62. Officers and servants of Tribunals :—(1) The President of the Tribunal shall, from time to time, prepare a statement showing—

(a) the member and grades of the clerks and other officers and servants who in his opinion should be maintained for carrying on the business of the Tribunal ;

(b) the amount of the salary to be paid to each such clerk, officer and servant.

(2) All statements prepared under sub-section (1) shall be subject to the previous sanction of the Provincial Government.

(3) Subject to any directions contained in any statement prepared under sub-section (1), and to rules made under sec. 73, the power of appointing, promoting, and granting leave to clerks, officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

63. Mode of payment :—The remuneration prescribed under Sec. 61 for members of the Tribunal and the salaries, leave allowances and acting allowances prescribed under this Act for clerks, officers and servants of the Tribunal shall be paid by the Trust to the President of the Tribunal for distribution.

64. Powers to make rules for Tribunal :—(1) The Provincial Government may from time to time make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by Tribunal established under this Act.

(2) All such rules shall be published by notification.

65. Award of Tribunal, how to be determined :—(1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894—

(a) if there is any disagreement as to the measurement of land, or to the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail ;

(b) notwithstanding anything contained in the foregoing clause, the decision on all questions of law and title and procedure shall rest solely with the President of the Tribunal, and such questions may

be tried and decided by the President in the absence of assessors unless the President considers their presence necessary.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by a Court of Small Causes, or if there be no such Court, by the Senior Sub-Judge within the local limits of whose jurisdiction it was made as if it were a decree of that Court.

66. Application of Act to acquisition by other local authorities :—(1) Whenever a Municipal Committee or other local authority acquires land for the purposes of—

- (i) laying out new public streets in any locality whether previously built upon or not ; or
- (ii) constructing new buildings and laying out of compounds attached thereto, abutting on such new public streets in any locality whether previously built upon or not ; or
- (iii) reclaiming unhealthy or insanitary localities—
 - (a) the modifications of the Land Acquisition Act contained in the Schedule to this Act shall, so far as they are applicable, apply to every such acquisition ;
 - (b) Provincial Government may constitute a Tribunal in accordance with sec. 60 and the provisions of secs. 57 to 66 and of sec. 73 so far as they relate to the Tribunal, shall thereupon apply to such acquisition.

(2) If the Provincial Government does not constitute a Tribunal in accordance with clause (b) of sub-section (1), all reference to the Tribunal in the Schedule shall be constructed as referring to the Court.

THE SCHEDULE

[See section 59 (b)]

**Further modifications in the Land Acquisition Act, 1894,
hereinafter called "the said Act".**

1. Amendment of section 3 :—After clause (e) of sec. 3 of the said Act, the following shall be deemed to be inserted, namely,—

“(ee) the expression “local authority” includes a Trust constituted under the Punjab Town Improvement Act, 1922”.

2. Notification under sec. 4 and declaration under sec. 6 to be replaced by notification under secs. 36 and 42 of this Act :—(1) The first publication of a notice of any improvement scheme under sec. 36 of this Act shall be substituted for and have the same effect as publication in the Gazette and in the locality of a notification under sub-section (1) of sec. 4 of the said Act, except where a declaration under sec. 4 or sec. 6 of the said Act has previously been made and is still in force.

(2) Subject to the provisions of clauses 10 and 11 of this Schedule, the issue of a notice under sub-section (1) of sec. 32 in the case of land acquired under that sub-section and in any other case the publication of a notification under sec. 42 shall be substituted for and have the same effect as a declaration

by the Provincial Government under sec. 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

3. Amendment of sec. 11 :—The full stop at the end of clause 11 of the said Act shall be deemed to be changed to a semi-colon, and the following shall be deemed to be added, namely,—

“and

“(iv) the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of sec. 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.”

“The Collector may disallow wholly or in part costs incurred by any person if he considers that the claim made by such person for compensation is extravagant.”

4. Amendment of sec. 15 :—In sec. 15 of the said Act, for the word and figures “and 24” the figures, word and letter “24 and 24-A” preceded by a comma, shall be deemed to be substituted.

5. Amendment of sec. 17 :—(1) In sub-section (3) of sec. 17 of the said Act, after the figures “24” the words, figures and letter “or, sec. 24-A” shall be deemed to be inserted.

(2) To the said sec. 17, the following shall be deemed to be added, namely,—

“(4) sub-sections (1) and (3) shall apply also to any area certified to be unhealthy by any Magistrate of the first class.

(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of sec. 9, and shall hear without any avoidable delay any objections which may be urged by them.

(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession.”

6. Transfer of land to Trust :—After sec. 17 of the said Act, the following shall be deemed to be inserted, namely,—

“17-A. In every case referred to in sec. 16 or sec. 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust ; and the land shall thereupon vest in the Trust subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition.”

7. Amendment of sec. 18 :—The full stop at the end of sub-section (1) of sec. 18 of the said Act shall be deemed to be changed to a comma, and the words “or the amount of the costs allowed” shall be deemed to be added.

8. Amendment of sec. 19 :—After the words “amount of compensation” in clause (c) of sec. 19 of the said Act, the words “and of costs (if any)” shall be deemed to be inserted.

9. **Amendment of sec. 20 :—**After the words “amount of compensation,” in clause (e) of sec. 20 of the said Act, the words “or costs” shall be deemed to be inserted.

10. **Amendment of sec. 23 :—**(1) In clause *first* and clause *sixthly* of sub-section (1) of sec. 23 of the said Act, for the words “publication of the declaration relating thereto under sec. 6” and the words “publication of the declaration under sec. 6” shall be deemed to be substituted,—

“(a) if the land is being acquired under sub-section (3) of sec. 32 of this Act the words “issue of the notice under sub-section (3) of sec. 32 of the Punjab Town Improvement Act, 1922” ; and

(b) In any other case, the words “first publication of the notification under sec. 36 of the Punjab Town Improvement Act, 1922”.”

(2) The full stop at the end of sub-section (2) of sec. 23 of the said Act shall be deemed to be changed to a colon and the following proviso shall be deemed to be added :

“Provided that this sub-section shall not apply to any land acquired under the Punjab Town Improvement Act, 1922”.

(3) At the end of sec. 23 of the said Act, the following shall be deemed to be added, namely,—

“(3) For the purposes of clauses *first* of sub-section (1) of this section—

(a) the market value of the land shall be the market value according to the *use* to which the land was put at the date with reference to which the market value is to be determined under that clause ;

(b) if it be shown that before such date, the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him ;

(c) if any person without the permission of the Trust required by sub-sec. (1) of sec. 31 of the Punjab Town Improvement Act, 1922, has erected, re-erected, added to or altered any building or wall so as to make the same project beyond a street alignment or building line duly prescribed by the Trust, then any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded ;

(d) if the market value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under the Punjab Town Improvement Act, 1922 ;

(e) if the market value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market value shall be deemed to be the market value of the land if put to ordinary use ; and

(f) when the owner of the land or building has after the passing of the Punjab Town Improvement Act, 1922, and within two years preceding the date with reference to which the market value is to be determined, made a return under any enactment in force of the rent of the land or building, the rent of the land or building, shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market value may be determined on the basis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement.

11. Amendment of sec. 24 :—For clause *seventhly* of sec. 24 of the said Act, the following shall be deemed to be substituted, namely,—

“*Seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair.”

12. After sec. 24 of the said Act, the following shall be deemed to be inserted, namely,—

“24-A. Further provision for determining compensation :—In determining the amount of compensation to be awarded for any land acquired for the trust under this Act, the Tribunal shall also have regard to the following provision, namely,—

- (a) When any interest in any land acquired under this Act has been acquired after the date with reference to which the market value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;
- (b) If, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building, shall not exceed the sum which the Tribunal consider the building would be worth if were put into a sanitary condition, or into a reasonable good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state.
- (c) If, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the material of the building, minus the cost of demolishing the building”.

13. Amendment of sec. 31 :—(1) After the words “the compensation” in sub-section (1) of sec. 31 of the said Act, and after the words “the amount

of compensation" in sub-section (2) of that section, the words "and cost if any" shall be deemed to be inserted.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of sec. 31 of the said Act, the words "or cost" shall be deemed to be inserted.

14. After sec. 48 of the said Act, the following shall be deemed to be inserted, namely,—

"48-A. Compensation to be awarded when land not required within one year :—If within a period of one year, from the date of the publication of the declaration under sec. 6 in respect of any land, the Collector has not made an award under sec. 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay."

15. Amendment of sec. 49 :—After sub-section (1) of s. 49 of the said Act, the following shall be deemed to be inserted, namely,—

*"Explanation.—*For the purposes of this sub-section land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

Punjab (5)

THE LAND ACQUISITION (PUNJAB AMENDMENT) ACT NO. 17 OF 1962

(Received the assent of the President of India on July 13, 1962 and was published in the Punjab Gazette Ext. Part I dated 21-7-62).

An Act to amend the Land Acquisition Act, 1894, in its application to the State of Punjab.

Be it enacted by the Legislature of the State of Punjab in the thirteenth year of Republic of India as follows :—

(The Central Act I of 1894 is amended only in respect of sections 12 (2) 12A and 25 only which are reproduced below)—

S. 12. Award of Collector when to be final :—(1) Such award shall be filed in the Collector's Office and shall, except as hereinafter provided, be final and conclusive evidence as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such persons interested as are not present personally or, by their representatives when the award is made [and, where the acquisition of land is not for the purposes of the Union, also send a copy of the award to the State Government.]

12-A. Power to correct award :—(1) The Collector may, at any time but not later than six months from the date of the award or where a reference is required to be made under section 18, before the making of such reference,

correct any clerical or arithmetical mistake in the award either of his own motion, or on the application of any person interested.

(2) The Collector shall give immediate notice of any correction made in the award to all persons interested and where the acquisition of land is not for the purposes of the Union, also to the State Government.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1) such person shall be liable to refund the excess, and if he defaults or refuses to pay, the same may be realised as an arrear of land revenue.

25. Rules as to amount of compensation :—(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed.

(2) When the applicant has refused to make such claim or has omitted without sufficient reasons (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.*

PART III

CHAPTER XIII

Rajasthan (1)

THE RAJASTHAN LAND ACQUISITION ACT, 1953 (Act No. XXIV of 1953)

^aAs amended by Rajasthan Land Acquisition (Amendment and Validation) Act No. 22 of 1966

(Received the assent of His Highness the Rajpramukh on the 14th day of November, 1953).

An Act to consolidate and amend the law for the compulsory acquisition of land in ¹[the State of Rajasthan].

WHEREAS it is expedient to consolidate and amend the law for the compulsory acquisition of land in ²[the State of Rajasthan] for public

**Ranjit Singh v. State of Punjab*, A. I. R. 1964, Punj., 32.

Punjab State v. Gopal Singh, A. I. R. 1964, Punj. 154.

Punjab State v. Lachman Das, A. I. R. 1964, Punj. 68.

(a) Rajasthan Land Acquisition (Amendment and Validation Act No. 22 of 1966), received assent of President on 15-11-66 and published in Rajasthan Gazette, Extraordinary, dated 22-11-66.

¹ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in the Rajasthan Gazette, Part IV-A. Extraordinary, dated 13-8-1957.

² Substituted by item No. 30 of the Schedule—*ibid*.

purposes and for companies and for determining the amount of compensation to be made on account of such acquisition ;

Be it enacted by the Rajasthan State Legislature as follows :

PART I

Preliminary

1. **Short title, extent and commencement** :—(1) This Act may be called the Rajasthan Land Acquisition Act, 1953.

²[(2) It extends to the whole of ⁵[the State of Rajasthan].

(3) It shall come into force at once.

³[2. * * *].

3. **Definitions** :—In this Act, unless there is anything repugnant in the subject or context,—

(a) the expression “land” includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth ;

(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act ; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land ;

(c) the expression “Collector” means the Collector of a district, and includes ⁴[an Additional Collector appointed to a district as well as] any officer specially appointed by the ⁵[State Government] to perform the functions of a Collector under this Act ;

(d) the expression “Court” means a principal Civil Court of original jurisdiction, and includes a court which the ⁵[State Government] may, by notification in the ⁵[official Gazette] appoint within any specified local limits to perform the functions of the court under this Act ;

(e) the expression “Company” means a company registered in ⁵[the State of Rajasthan] in accordance with law for the time being in force for registration of companies or any other company as defined in the Land Acquisition Act, 1894 (I of 1894) and includes a society registered under the Societies Registration Act, 1860 (XXI of 1860), as adapted to ⁵[the State of Rajasthan] or a duly registered co-operative society ;

² *ibid.*

³ Omitted—*ibid.*

⁴ Inserted and shall be deemed to have been inserted by section 2 of Rajasthan Act No. 10 of 1959, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 6-3-1959.

⁵ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in the Rajasthan Gazette, Part IV-A. Extraordinary, dated 13-8-1957.

(f) the expression "public purpose" includes the provision of village sites in districts in which the ⁵[State Government] shall have declared by notification in the ⁵[official Gazette] that it is customary for the ⁵[State Government] to make such provision ; ⁶[and a housing scheme as defined in the Rajasthan Housing Schemes (Land Acquisition) Act, 1960] and also includes planned development of lands from public funds and subsequent disposal thereof in whole or in part by lease or sale or in such other manner as may be directed by the ¹[State Government] with the object of securing further development as planned ;

(g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—
trustees for other persons beneficially interested shall be deemed the persons entitled to act, with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability and the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted :

Provided that—

- (i) no person shall be deemed 'entitled to act' whose interest in the subject-matter shall be shown to the satisfaction of the Collector or court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act ;
 - (ii) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof ;
 - (iii) the provisions of Order XXXII of the Code, shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or court by a next friend, or by a guardian for the case, in proceedings under this Act ; and
 - (iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale ;
 - (h) the expression "Code" means the Code of Civil Procedure, 1908.
- ⁷[(i) * * * *] and

⁵ See *ante*

⁶ Inserted—vide section 3 of the Rajasthan Act No. 40 of 1960, for the duration of the Rajasthan Act No. 40 of 1960 which is for 20 years ending 8th November, 1980 for the purpose of a housing scheme. It shall not apply to any building. The Rajasthan Act, No. 40 of 1960 has been published in the Rajasthan Gazette, Part IV-A, Extraordinary dated 9-11-1960.

⁷ Omitted by Rajasthan Act No. 27 of 1957.

- (i) the expression "local authority" includes an improvement or development trust constituted under any law for the whole or in part of ^a[the State of Rajasthan].

PART II

ACQUISITION

Preliminary Proceedings

4. ^aPreliminary proceedings preceding intended acquisition :—(1) Whenever the State Government considers it necessary or expedient to acquire land in any locality needed or likely to be needed for a public purpose it shall, by an order published in accordance with the provisions of sub-section (4) of section 45, require any officer subordinate to it and generally or specially authorised in this behalf to enter upon or into any land in such locality, accompanied by his servant and workmen, if any,—

- (a) to survey and take levels of such land suitable for such purpose,
- (b) to dig or bore into the sub-soil thereof,
- (c) to set out the boundaries of such land and the intended line of the work, if any proposed to be carried out thereon or therein.
- (d) where otherwise the survey cannot be completed or the levels cannot be taken of the boundaries or the line cannot be set out, to cut down and clear away any part of the standing crop, fence or jungle,
- (e) to mark the levels taken or the boundaries or the intended line of work by placing marks and cutting trenches,
- (f) to do all other acts necessary to ascertain whether land is suitable for such public purpose, and
- (g) to inquire into and ascertain the particulars of the persons interested in such land ;

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without giving such occupier at least seven days' notice in writing of his intention to do so.

(2) A copy of the order made under sub-section (1) shall also be endorsed to the Collector of the district in which such locality is situated with the direction to take suitable action upon receipt of the report under sub-section (4).

(3) The officer making an entry under sub-section (1) shall, at the time of such entry, pay or tender payment for all necessary damages to be done to the land entered upon or into and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute for the decision of the Collector ; and such decision shall be final.

(4) Such officer shall send to the Collector a report on the result of the survey, as to the other operations described in or carried on under sub-

^a Substituted by Rajasthan Act 27 of 1957.

^b Substituted by new section by Act No. 22 of 1966.

section (1) as to the enquiries made thereunder and as to the particular land in that locality which may be acquired for the purpose.

(5) The Collector shall, upon receipt of such report, cause to be given—

- (i) to the head of the Government department at whose instance the order under sub-section (1) shall have been made and to all persons reported under clause (g) of sub-section (1) to be interested in the land proposed thereby to be acquired as being suitable for the public purpose, a notice in the prescribed form of the proposed acquisition, and
- (ii) a public notice to the like effect at convenient places on or near about the land proposed to be acquired”.

Notes

The object of the Rajasthan Land Acquisition (Amendment and Validation) Act No. 22 of 1966 is to widen the scope of section 4, requiring persons interested to file their objections under S. 5A within the specified period after the service and given in such public notice ; reduction of the period for making the award under section 11 to three months, widening the scope of acquisitions for company under sections 40 and 41 when such company is engaged in an industry for public purposes, etc., For the Statement of Objects and Reasons see the Rajasthan Gazette Ext. Part 3 (Ka) dated April 13, 1966/Chaitra 23, 1888.

¹⁰[5. * * * *].

Objections

5A, Hearing of objections :—(1) Any person interested in any land ¹¹[in respect of which a notice has been given under sub-section (5) of section 4, as being proposed to be acquired for a public purpose or for a company] may, within thirty days ¹¹[after the service of the public notice in the manner provided in section 45] object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1), shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the ¹²[State Government] together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the ¹²[State Government] on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

¹⁰ Omitted by S. 2 of Rajasthan Act No. 15 of 1960.

¹¹ Substituted by Rajasthan Act No. 22 of 1966.

¹² Substituted by Section 4 of Rajasthan Act No. 27 of 1957, dated 13-8-57.

Declaration of Intended Acquisition

6. Declaration that land is required for a public purpose.—(1) Subject to the provisions of Part VII of this Act, when the ¹³[State Government] is satisfied, after considering the report, if any, made under section 5A, sub-section (1), that any particular land is needed for a public purpose, or for a company a declaration shall be made to that effect ¹⁴[in the prescribed form] under the signature of a Secretary to Government or of some officer duly authorised to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the ¹⁵[Official Gazette], and shall state the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be, and, after making such declaration, the ¹³[State Government] may acquire the land in manner hereinafter appearing.

¹⁶(4) Upon the publication of the declaration under sub-section (1), the Collector shall—

- (i) take order for the acquisition of the land so declared to be needed for a public purpose or for a company, and
- (ii) cause a plan of such land to be prepared if no such plan shall have been already prepared under section 4¹⁷.]

¹⁷[7. * * *]

¹⁷[8. * * *]

9. Notice to persons interested.—(1) The Collector shall ¹⁸[thereafter] cause public notice to be given at convenient places on or near the land to be taken, stating that the ¹³[State Government] intends to take possession of the land and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time

¹³ Omitted by section 2 of Rajasthan Act No. 15 of 1960, published in the Rajasthan Gazette, Extraordinary, dated 25-4-1960.

¹⁴ Substituted by Rajasthan Act No. 22 of 1966, Sec. 3.

¹⁵ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 13-8-1957.

¹⁶ Substituted by Rajasthan Act No. 22 of 1966, S. 4.

¹⁷ Omitted by Rajasthan Act No. 22 of 1966, S. 5.

¹⁸ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in Rajasthan Gazette, Part IV-A, Extraordinary, dated 13-8-1957.

not being earlier than fifteen days after the date of ¹⁹[service] of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements ¹⁹[of the land.]. The Collector may in any case require such statement to be made in writing and signed by the party or his agent,

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under the Indian Post Office Act 1893 (VI of 1898).

10. Power to require and enforce the making of statements as to names and interests.—(1) The Collector may also require any such person to make or deliver to him, at time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9, shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Enquiry into measurements, value and claims and award by the Collector

11. Enquiry and award by the Collector—(1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements ²⁰[of the land], and into the value of the land at the date of the publication of the ²⁰[declaration under section 6] ²¹[and at the relevant date] and into the respective interests of the persons claiming the compensation and shall, except for reasons beyond his control, make an award within a period of ²⁰[three months] commencing from the time fixed under sub-section (2) of section 9 under his hand of—

(i) the true area of the land ;

¹⁹ Substituted by Rajasthan Act 22 of 1966, Sec. 4.

²⁰ Inserted by Rajasthan Act No. 22 of 1966, Sec. 8.

²¹ Inserted—vide section 3 of Rajasthan Act No. 40 of 1960, for the duration of the Rajasthan Act No. 40 of 1960, which is for 20 years ending the 8th November, 1960 for the purpose of a housing scheme. It shall not apply to any building. The Rajasthan Act No. 40 of 1960 has been published in Rajasthan Gazette, Part IV-A, Extraordinary, dated 9-11-1960.

- (ii) the compensation which in his opinion should be allowed for the land;
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom, or of whose claims, he has information, whether or not they have respectively appeared before him ; and
- (iv) the costs which, in his opinion, should be allowed to any person who is found to be entitled to receive the additional sum of ten per centum mentioned in sub-section (2) of section 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

(2) The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant.

2211A. Government department or company to be informed of and represented at, the inquiry under section 11.—A notice of the day fixed for an inquiry under section 11 shall also be given to and served on the department at whose instance, or the company for which, proceedings for acquisition shall have been started under this Act and it shall be the duty of a representative of such department or company, as the case may be, to be present during completion of the enquiry and to assist the Collector in the completion of the enquiry so that the making of the final award may be expedited :

Provided that nothing in this section shall preclude the Collector from proceeding with the enquiry if such representative fails to appear before him.

12. Award of Collector when to be final :—(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The collector shall give immediate notice of his award or the amendment thereof to such of the persons interested as are not present personally or by their representative when the award or the amendment thereof is made.

12-A. Amendment of award when permissible.—Clerical or arithmetical mistakes in the award, may, at any time not later than six months from the date of the award, be corrected by the Collector either on his own initiative or on the application of the parties. If the amendment of the award discloses any overpayment, the Collector shall issue a notice to the persons to whom overpayment was wrongly made either immediately after the amendment of the award or after expiry of the time allowed to make a reference to the Court against the amendment of the award that if the amount overpaid is not credited to ²³[State Government] within a month after receipt of the notice such amount shall be recovered as arrear of land revenue.

²² Inserted by Rajasthan Act, 22 of 1966. Sec 8.

²³ See ante.

13. Adjournment of enquiry.—The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

14. Power to summon and enforce attendance of witnesses and production of documents.—For the purpose of enquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of Civil Court under the Code.

15. Matters to be considered and neglected.—In determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23, 24 and 24-A.

Taking Possession

16. Power to take possession.—When the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the ¹[State Government] free from all encumbrances.

17. Special powers in cases of urgency.—(1) In case of urgency, whenever the ¹[State Government] so directs, the Collector though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1) take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the ¹[State Government] free from all encumbrances.

Explanation. For the purpose of this sub-section the expression "arable land" includes garden land.

Explanation 2. This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of a scattered trees or temporary structures, such as huts or sheds ; and

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purposes of making thereon a riverside or ghat station, or of providing convenient connection with or access to breaches or other unforeseen damage occurring to roads, rivers, channels or tanks, it becomes necessary for the ¹[State Government] to acquire the immediate possession of any land for the purpose of maintaining road communication or irrigation or water-supply service, as the case may be, the Collector may, immediately after publication of the notice mentioned in sub-section (1) and with the previous sanction of the ¹[State Government] enter upon and take possession of such land, which shall thereupon vest absolutely, in the ¹[State Government] free from all encumbrances :

¹ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in Rajasthan Gazette, Part IV-A, Extraordinary, dated 13-3-1957.

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice, as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-section, the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24 or or section 24A ; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In the case of any land to which in the opinion of the ¹[State Government], the provisions of sub-section (1) or sub-section (2) are applicable, the ¹[State Government] may direct that the provisions of ²[section 5-A] shall not apply and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the ²[order under sub-section (1) of section 4].

(5) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate by a District Magistrate to be unhealthy.

(6) Before granting any such certificate, the District Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9 and shall hear without any avoidable delay any objection which may be urged by them.

(7) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession.

17A. Transfer of land to local authority.—When land is acquired for the purpose of a local authority, the Collector shall, in every case referred to in section 16 or section 17, make over charge of the land, upon payment of the cost of acquisition of that authority and the land shall thereupon vest in the local authority subject to its liability to pay any further costs which may be incurred on account of its acquisition.

PART II

Reference to Court and Procedure thereon

18. Reference to Court—(1) The ¹[State Government] department ²[for the company for which] acquisition is being made or any person

¹ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in Rajasthan Gazette, Part IV-A, Extraordinary, dated 13-8-1957.

² Substituted by the Second Schedule to Rajasthan Act No. 21 of 1962, published in Rajasthan Gazette, Part IV-A, Extraordinary, dated 15-12-1962.

interested who has not accepted the award or the amendment thereof may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the amount of costs allowed, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award or the amendment thereof is taken :

Provided that every such application shall be made

- (a) if the person making it was present or represented before the Collector at the time when he made his award or the amendment thereof within six weeks from the date of the Collector's award or the amendment thereof ; and
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 11, sub-section (2) or within six months from the date of the Collector's award or the amendment thereof whichever period shall first expire.

(3) Any order made by the Collector on an application made under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of section 115 of the Code.

19. Collector's statement to the Court.—(1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

- (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;
- (b) the names of the persons whom he has reason to think interested in such land ;
- (c) the amount awarded for damages and paid or tendered under sections 4 and 17, or either of them and the amount of compensation and of costs, if any, awarded under section 11 ;
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. Service of notice.—The Court shall thereupon cause a notice specifying the day on which the court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely :—

- (a) the applicant :
- (b) all persons interested in the objection : ¹[* * *]
- (c) if the objection is in regard to the area of the land or to the amount of the compensation or costs ²[the Collector and]
- ²[(d) if the applicant is a person interested, the Government depart-

¹ Omitted by Rajasthan Act No. 22 of 1966, Sec. 11.

² Inserted by Rajasthan Act No. 22 of 1966, Sec. 11.

ment on whose behalf, or the company for which, proceedings for acquisition may have been taken.]

21. Restriction on scope of proceedings.—The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the person affected by the objection.

22. Proceedings to be in open Court.—Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in Rajasthan shall be entitled to appear, plead and act (as the case may be) in such proceeding.

22-A. Cross-objections.—Whenever in pursuance of section 18(1), any person interested has raised any objection which has been referred by the Collector for the determination of the Court, the Government department ¹[or the Company for which] acquisition is being made, shall have the right of making cross-objection to the Court.

23. Matters to be considered in determining compensation.—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration,—

Firstly, the market-value of the land at the date of the publication of the declaration under section 6, ¹[or at the relevant date whichever is less] :

Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land by reason of severing such land from his other land :

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings.

Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change : and

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land

²[(2) * * * *]

¹ Substituted by Rajasthan Act No. 22 of 1966, Sec. 12.

² Omitted, vide section 3 of Rajasthan Act No. 40 of 1960 for the duration of the Rajasthan Act No. 40 of 1960 which is for 20 years ending the 8th November, 1980 for the purpose of a housing scheme, it shall not apply to any building. The Rajasthan Act No. 40 of 1960 has been published in Rajasthan Gazette, Part IV-A, Extraordinary, dated 9-11-60.

- (3) For the purposes of clause first of sub-section (1) of this section,—
- (a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under the clause, and for the purpose of the market-value, the Court shall take into consideration transfers of land similarly situated in similar use and shall not admit evidence that any price actually paid for similar land in similar use contains any element of the potential value of the land transferred for any more lucrative use, and if on the material date, the land is subject to any restrictions under any law for the time being in force, the market-value shall be assessed taking into account these restrictions ;
 - (b) if it be shown that before such date, the owner of the land had taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him ;
 - (c) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market value shall be deemed to be the market-value of the land, if put to ordinary uses ;
 - (d) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within one year before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;
 - (e) If the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease, as may be due to such cause shall be disregarded ;
 - (f) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding ; and
 - (g) when the owner of the land or building has, within two years preceding the aforesaid date, made a return of the rent of the land or building to the¹[State Government] or any local authority, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made,

¹ Substituted by Section 4 of Rajasthan Act No. 27 of 1957, published in Rajasthan Gazette, Part IV-A, Extraordinary, dated 13-8-1957.

save as the court may otherwise direct, and the market-value may be determined on the basis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined, the court shall take into consideration any increase in the letting value of the land or building due to such addition or improvement.

24. Matters to be neglected in determining compensation.—But the court shall not take into consideration,—

Firstly, the degree of urgency which has led to the acquisition ;

Secondly, any disinclination of the person interested to part with the land acquired ;

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

Fourthly, any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

Sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or

Seventhly, any outlay or improvements on, or additions to, or disposal of, the land acquired, commenced, made, or effected without the sanction of the Collector after the date of the [giving the public notice under sub-section (5) of section 4.]

24A. Further provisions for determining compensation.—In determining the amount of compensation to be awarded for any land acquired under this Act, the court shall have regard also to the following provisions, namely :—

(i) when any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(ii) if in the opinion of the court any building which is used or is intended or is likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building.

25. Rules as to amount of compensation.—(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the court shall not exceed the amount so claimed.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim,

the amount awarded by the court shall in no case exceed the amount awarded by the Collector.

26. Form of award—(1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section, 2, clause (9) respectively of the Code.

27. Costs.—(1) Every such award shall also state the amount of costs incurred in the proceedings under this part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deductions from his costs should be made or that he should pay a part of the Collector's costs.

28. Collector may be directed to pay interest on excess compensation.—

(1) If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is excess of the sum which the Collector did award as compensation, the award of the court may direct that the Collector shall pay interest on such excess at the rate of four per centum per annum from the date on which he took possession of the land to the date of payment of such excess into court.

PART IV.

Apportionment of compensation

29. Particulars of apportionment to be specified.—Where there are several persons interested, if such persons agree in the apportionment of compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

30. Dispute as to apportionment.—When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the court.

PART V

Payment

31. Payment of compensation or deposit of same in court.—(1) On making an award under section 11, the Collector shall tender payment of

the compensation and costs, if any, awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by someone or more of the contingencies mentioned in the next sub-section.

† (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation and costs, if any, in the court to which a reference under section 18 would be submitted ;

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation or costs awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the ¹[State Government], instead of awarding a money compensation in respect of any land, make an arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way, as may be equitable, having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter any arrangement with any person interested in the land and competent to contract in respect thereof.

(5) When a person interested in any land and competent to contract in respect thereof has, at any stage of the proceedings for the acquisition of land stated in writing before the Collector, or, if the proceedings are pending in a court, before that court, that he gives up his claim to compensation in respect of the land, he shall be deemed to have received and given a valid discharge for such compensation for the land as would otherwise have been payable to him.

32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate.—(1) If any money shall be deposited in court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the court shall—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held ; or

¹ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 13th August, 1957.

- (b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the court shall think fit ;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys remain so deposited and invested until the same be applied—

- (i) in the purchase of such other lands as aforesaid ; or

- (ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely :—

- (a) the costs of such investments as aforesaid ;

- (b) the costs of the orders for the payment of the interest or other proceeds, of the securities upon which moneys are for the time being invested and for the payment out of court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. Investment of money deposited in other cases.—When any money shall have been deposited in court under this Act for any cause other than that mentioned in the last preceding section, the court may on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

34. Payment of interest.—When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of four per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

PART VI

Temporary Occupation of Land

35. Temporary occupation of waste or arable land—Procedure when difference as to compensation exists.—(1) Subject to the provisions of Part VII of this Act, whenever it appears to the ¹[State Government] that the temporary occupation and use of any waste or arable land are

¹ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 13th August, 1957.

needed for any public purpose, or for a company, the ¹[State Government] may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

[Explanation,—The provisions of Explanations, 1, and, 2, to sub-section (1) of section 17 shall *mutatis mutandis* apply to this sub-section]

(2) Before issuing a direction under sub-section (1), the ¹[State Government] may require a Collector to submit—

- (a) a plan of the land which is needed for occupation and use ;
- (b) a report stating whether it is desirable to occupy the land ; and
- (c) an estimate of the compensation that would be payable under sub-section (4)

and upon the issue of such a requisition, the Collector shall cause public notice of the substance of the requisition to be given at convenient places in the locality in which the land is situated. After the issue of such notice it shall be lawful for any officer either generally or specially authorised by the Collector in this behalf, and for his servants and workmen—

to enter upon and survey and take levels of any land in such locality ; to dig or bore into the sub-soil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose :

to set out the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made therein ;

to mark such levels, boundaries and line by placing marks and cutting trenches ; and

where otherwise the survey cannot be completed and the level taken or the boundaries and line marked, to cut down and clear away any or part of the standing crop, fence or jungle.

(3) The officer authorised under sub-section (2) shall, at the time of his entry, pay or tender payment for all necessary damage to be done as aforesaid and, in the case of dispute as to the sufficiency of the amount, so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other Chief Revenue Officer of the district and such decision shall be final.

(4) Upon the issue of a direction under sub-section (1), the Collector shall give notice in writing to the persons interested in such land of the purpose for which the same is needed and shall, for the occupation and use thereof for such term as aforesaid and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(5) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the court,

¹ See *ibid.*

36. Power to enter and take possession, and compensation on restoration.—(1) On payment of such compensation, or on executing such agreement or on making a reference under Section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the ¹[State Government] shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a company.

37. Difference as to condition of land.—In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court, and thereafter the provisions contained in Part III shall *mutatis mutandis* be applicable thereto.

CHAPTER VIA

Acquisition of land for the purpose of the Union

37A. State Government competent to acquire land for purposes of the Union.—(1) Subject to the provisions of sub-section (2), the State Government may acquire land situated in the State, for any public purpose being a purpose of the Union, if a request in writing is made to it by the Central Government or any officer thereof ; generally or specially authorised on this behalf :

(2) In every case of acquisition under sub-section (1) the provisions of this Act shall, so far as may be, have effect as if,—

- (i) after the expression “public purpose” whatever occurring, the expression, being a “purpose of the Union” were inserted :
- (ii) for the expression “State Government department” or the expression “Government department” wherever occurring, the expression “Central Government” department were substituted .
- (iii) in section 6 in the proviso to sub-section (1), for the expression “a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority” the expression “the Central Government” were substituted ;
- (iv) in section 17A, for the expression “local authority” or the expression “that authority” wherever occurring, the expression “the Central Government” were substituted :
- (v) after section 36 the following new section was inserted :—

¹ Substituted by Section 4 of Rajasthan Act No. 27 of 1957, published in Rajasthan Gazette, Part IV-A, Extraordinary, dated 13-8-1957.

36-A. Liability of the Central Government to pay compensation etc. in cases of temporary occupation of land.—When land is needed or acquired under section 35 or section 36, for purposes of the Union, the compensation or damage payable under the said section shall be paid by the Central Government.

(vi) in section 48.—

(a) in sub-section (1) for the expression “shall be at liberty” the expression “may, upon the request of the Central Government” were substituted :

(b) after sub-section (2), the following sub-section were inserted, namely :—

“(2A) where the State Government withdraws from the acquisition upon the request of the Central Government, the compensation payable under this section shall be paid by the Central Government”; and

(vii) in section 48A, after the expression “compensation” the expression “from the Central Government” were substituted.

PART VII

Acquisition of land for companies

38. Company may be authorised to enter and survey :—(1) The ¹[State Government] may authorise any officer of any company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

²[2] In every such case, Section 4 shall be construed as if for the expression “for a public purpose” or the expression “for such purpose” or the expression “for the public purpose,” the expression “for the purpose of the company” were substituted and for the words “any officer subordinate to it”, the words “any officer of the company” were substituted.

38A. Industrial concern to be deemed company for certain purposes :—An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a company for the purposes of this Part, and the references to company in sections 5-A, 6, 17 and 50 shall be interpreted as references also to such concern.

39. Previous consent of ¹[State Government] and execution of agreement necessary :—The provisions of Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any company unless with

¹ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 13th August, 1957.

² Substituted by Rajasthan Act No. 22 of 1966, Sec. 16.

the previous consent of the ¹[State Government] not unless the company shall have executed the agreement hereinafter mentioned.

40. Previous enquiry :—(1) Such consent shall not be given unless the ¹[State Government] be satisfied, either on the report of the Collector under section 5A, sub-section (2) or by an enquiry held as hereinafter provided,—

- (a) that the purpose of the acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the company or for the provision of amenities directly connected therewith : or
- ²(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking itself in any industry or work which is for a public purpose : or
- (b) That such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time, and place as the ¹[State Government] shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and as far as possible, in the same manner as is provided by the Code in case of a Civil Court.

41. Agreement with ¹[State Government] :—If the ¹[State Government] is satisfied after considering the report, if any, of the Collector under Section 5A, sub-section (2) or on the report of the officer making an inquiry under Section 40, that ²[the proposed acquisition is for any of the purposes referred to in clause (a), clause (aa) or clause (b) of sub-section (1) of Section 40,] it shall require the company to enter into an agreement with the ¹[State Government] providing to the satisfaction of the ¹[State Government], for the following matters, namely :

- (1) the payment to the ¹[State Government] of the cost of the acquisition :
- (2) the transfer, on such payment, of the land to the company :
- (3) the terms on which the land shall be held by the company :
- (4) where the acquisition is for the purpose of erecting dwelling houses or the provisions of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided ³[**]

²[(4a) where the acquisition is for the construction of any building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose the time within which, and the conditions on which, the building or work shall be constructed or executed : and]

(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.

¹ Substituted by Rajasthan Act 27 of 1957.

² Substituted by Rajasthan Act 22 of 1966.

³ Omitted by *ibid*.

42. Publication of agreement :—Every such agreement shall, as soon as may be after its execution, be published in the ²[Official Gazette] and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

43. Sections 39 to 42 not applicable where ¹[State Government] bound by agreement to provide land for companies.—The provisions of Sections 39 to 42, both inclusive, shall not apply and the corresponding provisions of any law repealed by Section 2 shall be deemed never to have applied, to the acquisition of land for any railway or other company for the purposes of which, under any agreement with such company, the ¹[State Government] is or was bound to provide land.

³[**44A. Restriction on transfer etc.**—No company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the State Government.

44B. Land not to be acquired under this Part except for certain purposes for private companies other than Government companies :—Notwithstanding any thing contained in this Act, no land shall be acquired under this Part except for the purpose mentioned in clause (a) of sub-section (1) of Section 40, for a private company which is not a Government company.

Explanation :—“Private Company” and “Government Company” shall have the meanings respectively assigned to them in the Companies Act 1956 (Central Act, of 1956).

PART VIII

Miscellaneous

45. Service of Notice :—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under Section 4 ⁴[***] by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector, or the Judge, as the case may be.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him : and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, and by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector ⁴[***] or in the court-house, and also in some conspicuous part of the land to be acquired :

¹ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 13-8-1957.

² Substituted by Rajasthan Act No. 22 of 1966.

³ Inserted by *ibid*.

⁴ Omitted by Act 8 of 1962.

Provided that, if the Collector, ¹[***] or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein his last known residence, address or place of business, and registered under the Indian Post Office Act 1898 (VI of 1898) and service of it may be provided by the production of the addressee's receipt.

²[(4) A public notice required to be given under this Act shall be in writing and shall be signed and sealed by the officer giving the same. It shall be affixed at the notice board of the office of such officer and the copies of such notice shall be affixed on the notice board of the tehsil concerned and on the notice board of the village Panchayat, if any constituted under any law for the time being in force. Its contents shall be made widely known in the locality in which the land proposed to be acquired is situated, by affixing copies thereof at some convenient place on or near about such land and in other conspicuous public places in the locality or by publishing the same by beat of drums or by advertisement in a newspaper having wide circulation in the locality or by any two or more of these means.]

46. Penalty for obstructing acquisition of land :—Whoever wilfully obstructs any person in doing any of the acts authorised by section 4 [or any other provisions of this Act] or wilfully fills up, destroys, damages or displaces any trench or mark made under Section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both,

47. Magistrate to enforce surrender :—If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself and if not a Magistrate, he shall apply to a Magistrate and such Magistrate shall enforce the surrender of the land to the Collector.

48. Completion of acquisition not compulsory but compensation to be awarded when not completed :—(1) Except in the case provided for in Section 36, the ³[State Government] shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the ³[State Government] withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

¹ Omitted by item (5) of the Schedule to Rajasthan Act No. 8 of 1962, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 23-4-1962.

² Inserted by Rajasthan Act No. 22 of 1966.

³ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 13-8-1957.

48A. Compensation to be awarded when land not acquired within one year :—(1) If within a period of one year from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

48B. Sections 48 and 48A not to apply in certain cases.—No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement with, or the acceptance of a payment to, the owner of the land.

49. Acquisition of part of house or building.—(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired.

Provided that the owner may, at any time before the Collector has made his award under section 11 by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the court and shall not take possession of such land until after the question has been determined.

In deciding on such reference the court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1) *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, ¹[State Government] is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceeding under sections ²[6, 9 and 10] both inclusive shall be necessary ; but the Collector shall without delay proceed to make his award under section 11.

(4) For the purposes of sub-section (1) land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house.

¹ Substituted by section 4 of Rajasthan Act No. 27 of 1957, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 13-8-1957.

² Inserted by Rajasthan Act No. 22 of 1966.

50. Acquisition of land at cost of a local authority—(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or company.

(2) In any proceeding held before a Collector or Court, in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

¹[****]

51. Exemption from stamp duty and fees.—No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

52. Notice in case of suits for anything done in pursuance of Act.—No suit or other proceeding shall be commenced or prosecuted against any person for any thing done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

53. Code to apply to proceedings before Court.—Same in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code shall apply to all proceedings before the Court under this Act.

54. Appeals in proceedings before Courts—Subject to the provisions of the Code applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court of Judicature for Rajasthan from the award, or from any part of the award of the Court, and any decree of the said High Court passed on such appeal as aforesaid shall be subject to further appeal in accordance with the provisions contained in Sections 109 and 110 and Order XLV of the Code.

55. Power to make rules.—(1) The ²[State Government] shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the conditions of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations, and additions shall be published in the ¹[Official Gazette] and shall thereupon have the force of law.

³[(4) All rules, alterations and additions finally made under this Act or after the coming into force of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1966 shall be laid as soon as may be, after they are so made, before the House of State Legislature while it is in session for a period of no less than fourteen days which may be comprised in one session or in two successive sessions and if before

¹ Proviso is omitted by Rajasthan Act No. 22 of 1966, Sec. 25.

² Substituted by Sec. 4 of Rajasthan Act No. 27 of 1955.

³ Inserted by Sec. 26 of Rajasthan Act No. 22 of 1966,

expiry of the session in which they are laid or of the session immediately following the House of the State Legislature makes any modification in any of such rules, alterations or additions or resolves that any such rule, alteration or additions should not be made, such rule, alteration or addition shall thereafter have effect in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

56. [* * * *]

RAJASTHAN LAND ACQUISITION (AMENDMENT AND VALIDATION) ACT No. 22 OF 1966.

27. Validation of certain acquisitions :—(1) Notwithstanding any judgement, decree or order of any Court, every acquisition of land for a company made or purporting to have been made under Part VII of the principal Act before the commencement of this Act, shall in so far as such acquisition is not for any of the purposes mentioned in clause (a) or clause (b) of sub-section (1) of Section 40 of the principal Act, be deemed to have been made for the purpose mentioned in clause (aa) of the said sub-section, and accordingly every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of Sections 40 and 41 of the principal Act, as amended by this Act, were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was entered into or action was taken.

Explanation :—In this section, the expression "Company" has the meaning assigned to it under the principal Act.

(2) Every acquisition of land for any public purpose being a purpose, of the Union, made by the State Government acting or purporting to act under the principal Act, at any time before its amendment by this Act, shall be deemed to be and always to have been as valid as if Section 37 A of the principal Act, as inserted by this Act, were in force at the time when any such acquisition was made and accordingly, notwithstanding anything contained in any judgement, order, decree or decision of any court and notwithstanding any error, omission, defect or want of jurisdiction, power or authority :—

- (a) no such acquisition made nor any proceeding held, order passed, agreement or award made, action taken or power exercised, in connection with such acquisition, shall be called in question merely on the ground that the authority acquiring the land or any officer or court holding the proceeding, passing the order, making the agreement or award, taking the action or exercising the power was not competent in law to do so :

¹ Omitted by item No. 30 of the Schedule—*ibid*.

² Validating provisions of Rajasthan Act No. 22 of 1966.

- (b) any such proceeding pending on the date of the commencement of this Act shall be maintained and continued under the principal Act as if it were lawfully instituted thereunder : and
- (c) no court shall enforce any decree or order setting aside any such acquisition or award or agreement made in connection therewith.

Note

It would have been far better to enact a new enactment repealing the old Act of 1953 instead of amending almost all the sections along with large number of insertions and including within the new Amendment Act galores of re-amending provisions.

Rajasthan (2)

THE RAJASTHAN LAND REFORMS AND ACQUISITION OF LANDOWNERS' ESTATES ACT NO. 11 OF 1964

(Extracts)

*(Received the assent of President on 6. 4. 64 published in Rajasthan
Gazette Ext. 13. 4. 64)*

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10. Acquisition of Estates.—(1) As soon as may be after the commencement of this Act, the Government may, by notification in the official Gazette, appoint a date for the acquisition of landowners' estates in the State and for their vesting in the State Government, and different dates may be fixed for such acquisition and vesting for different areas of the State in which such estates are situated, or for different classes of estates according as they are settled or unsettled.

(2) The Government may, by notification in the official Gazette, vary any date appointed under this section at any time before such date.

(3) The date finally appointed under this section in relation to the acquisition of any estate is in this Act referred to as the date of vesting of that estate.

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12. Liability to pay compensation :—(1) Subject to the other provisions of this Act, the Government shall be liable to pay every landowner whose estate is acquired under section 7, such compensation as shall be determined, in accordance with the principles laid down in the Schedule.

(2) Compensation payable under this section shall be due as from the date of vesting and shall carry simple interest at the rate of two and half per cent per annum from that date up to the date of payment.

Provided that no interest shall be payable on any amount of compensation which remains unpaid for any default of the landowner, the agent or his representative in interest.

* * * *

Payment of Compensation

14. Statement of claim.—(1) Every landowner whose estate has been acquired under Section 7 shall, within two months from the date of vesting, file, in the prescribed form, a statement of claim for compensation before the Compensation Commissioner.

Provided that the compensation Commissioner may entertain a statement submitted after the period prescribed in this section if he is satisfied that the landowner was prevented by sufficient cause from submitting the statement within the prescribed time.

(2) Every such statement of claim shall contain the following particulars, namely—

- (i) description of the estate and the name of the landowner :
- (ii) the number and names of villages comprised in his estate or in which lands forming part of his estate are situated together with the particulars of area and the income therefrom on account of rent :
- (iii) the amount of gross income from his estate calculated in accordance with, and other details of such income from various sources specified in the schedule :
- (iv) the amount which are required to be deducted from the said gross income in accordance with the schedule for the computation of the net income of the landowner :
- (v) the amount of dues recoverable from the landowner under clause (e) of sub-section (f) of Section 8 : and
- (vi) such other particulars as may be prescribed.

(3) Where a landowner relied upon any documents (whether in his possession or not) as evidence in support of the statement of claim, he shall enter such documents in a list to be *added* or annexed to the statement of claim.

15. Determination of compensation.—(1) On receipt of a statement of claim under section 14, or if no such statement of claim is received within the period specified in that section, upon the expiry of that period, the Compensation Commissioner shall after making such enquiry as he deems necessary, by order in writing, provisionally determine—

- (a) the amount of compensation payable to the landowner under Section 2 :
- (b) the amount recoverable from the landowner under clause (e) of sub-section (1) of Section 8 and the Schedule.

(2) A copy of an order made under sub-section (1) shall be served upon the Government and land owner, and the Compensation Commissioner shall, after giving the Government and the landowner a reasonable opportunity of being heard in the matter, make a final order.

16. Communication of decision.—The Compensation Commissioner shall communicate as soon as practicable, his final order made under sub-section (2) of Section 15 to the Government and the landowner.

17. Payment of compensation.—(1) After the amount of compensation payable to a landowner under Section 12 is finally determined under sub-section (2) of Section 10 and the amount specified in clause (b) of sub-section (1) of that section as finally determined is deducted therefrom, the balance shall be divided into thirty equal annual instalments.

(2) the payment of compensation money under this Act to a landowner shall be a full discharge of the Government from the liability to pay compensation in lieu of the acquisition of his estate by the Government but shall not prejudice the right to which any other person may be entitled by due process of law to enforce against the landowner.

18. Form of compensation.—The compensation payable under this Act shall be given in cash or in bonds or partly in cash and partly in bonds, as may be prescribed.

19. Payment of compensation on the death of landowner.—If any landowner to whom compensation is payable under this Act dies before the full payment of such compensation to him, such compensation as may remain payable to him under this Act, shall be payable to the person who is recognised by the President as the successor of such landowner in relation to the Indian State of which he was the Ruler.

20. Appeals from the orders of Compensation Commissioner and Collector.—(1) The Government or any person aggrieved by any decision of the Compensation Commissioner or the Collector as the case may be, may—

(a) under sub-section (2) of Section 3, sub-section (2) of Section 10 and sub-section (2) of Section 11, within ninety days of the date of such decision, and

(b) under sub-section (2) of Section 15 within ninety days from the date of communication of such order, appeal to the Board.

(2) When an appeal is made to the Board under sub-section (1) the appeal shall be heard and decided by a Bench of the Board consisting of two members.

(3) In deciding an appeal under this section, the authority hearing the appeal shall follow the same procedure as is prescribed for the hearing of the appeals made to it under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955).

(4) The decision of the Board in an appeal under this section shall be final.

21. Review.—(1) The Board, or the Compensation Commissioner may, either on an application made within three months of the date of order by an interested party, or *suo motu*, review an order passed by the Board or by such Commissioner himself by his predecessor in office and pass such order in relation thereto as it or he thinks fit.

(2) No order passed by the Board or the Compensation Commissioner shall be reviewed under sub-section (1) otherwise than on any of the grounds mentioned in Rule I, Order XLVII of the First Schedule to

the Code of Civil Procedure, 1908 (Central Act 5 of 1908) and provisions of the said order shall apply.

PART III.

CHAPTER XIV

Uttar Pradesh

U. P. (1)

The United Provinces Municipalities Act, II of 1916. (U. P. Council).

Sections 117 & 324.

117. Compulsory acquisition of land :—Where a Board, for the purpose of exercising any power or performing any duty conferred or imposed upon it by or under this or any other enactment, desires the Local Government to acquire on its behalf, permanently or temporarily, any land or any right in respect of land under the provisions of the Land Acquisition Act, 1894 or of other existing law, the Local Government may, at the request of the Board, acquire such land or such right under the aforesaid provisions; and, on payment by the Board to Local Government of the compensation awarded thereunder and of the charges incurred by the local Government in connection with proceedings, the land or right, as the case may be, shall vest in the Board.

324. Disputes as to compensation payable by Board :—(1) Should a dispute arise touching the amount of compensation which the Board is required by this Act to pay, it shall be settled in such manner as the parties may agree, or in default of agreement, by the Collector, upon application made to him by the Board or the person claiming compensation.

(2) Any decision of the Collector awarding compensation shall be subject to a right of the applicant for compensation to require reference to the District Judge, in accordance with the procedure set forth in Section 18 of the Land Acquisition Act, 1894.

(3) In cases in which compensation is claimed in respect of land, the Collector and the District Judge shall, as far as may be, observe the procedure prescribed by the said Act, for proceedings in respect of compensation for the acquisition of land acquired for public purposes.

U. P. (2)

THE UNITED PROVINCES TOWN IMPROVEMENT ACT (VIII OF 1919)

(Extracts)

56. Power to acquire land under the Land Acquisition Act, 1894.—The Trust may, with the previous sanction of the Provincial

Government, acquire land under the provisions of Land Acquisition Act, 1894, as modified by the provisions of the Act, for carrying out any of the purposes of this Act.

57. Tribunal to be constituted.—A Tribunal shall be constituted as provided in Sec. 59, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894.

58. Modification of the Land Acquisition Act, 1894.—For the purpose of acquiring land under the said Act for the Trust—

- (a) the Tribunal shall (except for the purposes of Sec. 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be Judge under the said Act ;
- (b) the said Act shall be subject to the further modifications indicated in the Schedule ;
- (c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of Civil Court under the Code of Civil Procedure, 1908 ; and
- (d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final.

59. Constitution of Tribunal.—(1) The Tribunal shall consist of a President and two assessors.

(2) The President of the Tribunal shall be either—

- (a) a member of the Judicial Branch of the Imperial or Provincial Civil Service of not less than ten years' standing in such service, who has for at least three years served as District Judge or held Judicial office not inferior to that of a Subordinate Judge of the first grade ; or
- (b) a barrister, advocate or pleader of not less than ten years' standing who has practised as an Advocate or Pleader in the High Court of Judicature at Allahabad or of the Court of Judicial Commissioner of Oudh.

(3) The President of the Tribunal and one of the assessors shall be appointed by the Provincial Government, and the assessor shall be appointed by the Municipal Board, or in default of appointment by the Municipal Board within two months of their being asked by the Provincial Government to make such appointment.

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or would, if he were a Trustee, be liable to removal by the Provincial Government under Sec. 10.

(4) The term of office of each member of the Tribunal shall be two years ; but any member shall, subject to the proviso of sub-section (3), be eligible for re-appointment at the end of that term.

(5) The Provincial Government may, on the ground of incapacity or misbehaviour or for any other good and sufficient reason, cancel the appointment of any person as member of the Tribunal.

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any unavoidable cause; the authority which appointed him shall forthwith appoint a fit person to be a member in his place. Where the authority so appointing was the Municipal Board and the Municipal Board fails to make a fresh appointment within two months of being asked to do so by the Provincial Government, the appointment may be made by the Provincial Government.

63. Power to make rules for Tribunal.—(1) The Provincial Government may from time to time make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of the business by Tribunals established under this Act.

(2) All such rules shall be published by notification.

64. Award of Tribunal how to be determined.—(1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894—

(a) if there is any disagreement as to the measurement of land, or the amount of compensation or cost to be allowed, the opinion of the majority of the members of the Tribunal shall prevail ;

(b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors, if the President of the Tribunal considers their presence unnecessary : and when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal ; and

(c) not with standing anything contained in the foregoing clause, the decision of the President shall be deemed to be the decision of the tribunal ; and

(2) every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by a Court of Small Causes within the local limits of whose jurisdiction it was made as if it were a decree of the Court.

THE SCHEDULE

[See Section 58 (b)]

Further modifications in the Land Acquisition Act, 1894

1. Amendment of Sec. 3.—After clause (e) of Sec. 3 of the said Act, the following shall be deemed to be inserted, namely,—

“(ee) the expression, ‘local authority’ includes a Trust constituted under the United Provinces Town Improvement Act, 1919”.

2. Notification under Sec. 4 and declaration under Sec. 6 to be replaced by notification under Secs. 36 and 42 of this Act.—(1) The first publication of a notice of an improvement scheme under Sec. 36 of this Act shall be substituted for and have the same effect as publication in the Gazette and in the locality, of a notification under sub-section (1) of Sec. 4

of the said Act, except where a declaration under Sec. 4 or Sec. 6 of the said Act, has previously been made and is still in force.

(2) Subject to the provisions of Secs. 10 and 11 of this Schedule, the issue of a notice under sub-section (4) of Sec. 29 in the case of land acquired under that sub-section and in any other case the publication of a notification under Sec. 42 shall be substituted for and have the same effect as a declaration by the Provincial Government under Sec. 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

3. **Amendment of Sec. 11.**—The full stop at the end of Sec. 11 of the said Act shall be deemed to be changed to a semi-colon, and the following shall be deemed to be added, namely,—

“(iv) the costs which, in his opinion should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of Sec. 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.”

“The Collector may disallow wholly or in part, costs incurred by any person if he considers that the claim made by such person for compensation is extravagant,”

4. **Amendment of Sec. 15.**—In Sec. 15 of the said Act, for the word and figures “and 24” the figures, the words and letters “24 and 24-A” preceded by a comma, shall be deemed to be substituted.

5. **Amendment of Sec. 17.**—(1) In sub-section (3) of Sec. 17 of the said Act, after the figures, “24” the words, figures and letters “or section 24-A” shall be deemed to be inserted.

(2) To the said Sec. 17, the following shall be deemed to be added, namely,—

“(4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in certificate granted by the District Magistrate or a Magistrate of the first class to be unhealthy.

(5) Before granting any such certificate the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of Sec. 9, and shall hear, without any avoidable delay, any objections which may be urged by them.

(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage for consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession.”

6. After Sec. 17 of the said Act, the following shall be deemed to be inserted, namely,—

“17-A. **Transfer of land to Trust.**—In every case referred to in Sec. 16 or Sec. 17, the Collector shall, upon payment of the cost of acquisition make over charge of the land to the Trust, and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition.”

7. **Amendment of Sec. 18.**—The full stop at the end of sub-section, (1) of Sec. 18 of the said Act shall be deemed to be changed to a comma and the words “or the amount of the costs allowed” shall be deemed to be added.

8. **Amendment of Sec. 19.**—After the words “amount of compensation” in clause (c) of Sec. 19 of the said Act, the words “and of costs (if any)” shall be deemed to be inserted.

9. **Amendment of Sec. 20.**—After the words “amount of compensation” in clause (c) of Sec. 20 of the said Act, the words “or costs” shall be deemed to be inserted.

10. **Amendment of Sec. 23.**—(1) In clause *first* and clause *sixthly* of sub-section (1) of Sec. 23 of the said Act, for the words, “publication of the declaration under Sec. 6” shall be deemed to be substituted—

“(a) if the land is being acquired under sub-section (3) of Sec. 29 of this Act, the words “issue of the notice under sub-section (3) of Sec. 29 of the United Provinces Town Improvement Act, 1919” ; and

(b) in any other case, the words “first publication of the notification under Sec. 36 of United Provinces Town Improvement Act, 1919.”

(2) The full-stop at the end of sub-section (2) of Sec. 23 of the said Act shall be deemed to be changed to a colon, and the following proviso shall be deemed to be added :

“Provided that the sub-section shall not apply to any land acquired under the United Provinces Town Improvement Act, 1919, except,—

(a) land acquired under sub-section (4) of Sec. 29 of that Act, and
(b) buildings in the actual occupation of the owner, or occupied free of rent by a relative of the owner, and land appurtenant thereto, and

(c) gardens not let to tenants but used by the owners as a place of resort.”

(3) At the end of Sec. 23 of the said Act, the following shall be deemed to be added, namely,—

“(3) for the purposes of clause *first* of sub-section (1) of this section—

(a) the market value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market value is to be determined under that clause ;

(b) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him ;

(c) if any person without the permission of the Trust required by clause (b) of sub-section (1) of Sec. 29 or by sub-section (3) of Sec. 30 or by sub-section (4) of Sec. 32 of the United Provinces Town Improvement Act, 1919, has erected, re-erected added to or altered any building or wall so as to make the same project

beyond the street alignment prescribed under Sec. 22 or building line shown in any plan finally adopted by the Trust under Sec. 30, or within the area specified in sub-section (4) of Sec. 32, as the case may be, then any increase in the market value resulting from such erection, re-erection, addition of alteration shall be disregarded ;

- (d) if the market value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;
- (e) if the market value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market value shall be deemed to be the market value of the land if put to ordinary uses ; and
- (f) if the market value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of his inmates such overcrowding shall be disregarded, and the market value shall be deemed to be the market value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding ;
- (g) when the owner of the land or building has, after passing of the United Provinces Town Improvement Act, 1919, and within two years preceeding the date with reference to which the market value is to be determined, made a return under Sec. 158 of the United Provinces Municipalities Act, 1916, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made save as the Court may otherwise direct, and the market value may be determined on the basis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement.

11. Amendment of Sec. 24.—For clause *seventhly* of Sec. 24 of the said Act, the following shall be deemed to be substituted, namely,—

“*Seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair.

12. After Sec. 24 of the said Act, the following shall be deemed to be inserted, namely,—

“14-A. Further provision for determining compensation.—In determining the amount of compensation to be awarded for any land acquired for the Trust under this Act, the Tribunal shall also have regard to the following provisions, namely;—

- “(1) when any interest in any land acquired under this Act has been acquired after the date with the reference to which the market value is to be made so as to increase the amount of compensation to be paid for such land ;
- (2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state ;
- (3) if, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus cost of demolishing the building.”

13. **Amendment of Sec. 13.**—(1) After the words “the compensation” in sub-section (1) of Sec. 31 of the said Act, and after the words “the amount of the compensation” in sub-section (2) of that section the words “and costs (if any)” shall be deemed to be inserted.

14. After Sec. 48, the following shall be deemed to be inserted namely,—

“48-A. Compensation to be awarded when land not acquired within two years—(1) If within a period of two years from the date of the publication of the declaration under Sec. 6 in respect of any land, the Collector has not made an award under Sec. 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

- (2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

15. **Amendment of Sec. 49.**—After the sub-section (1) of Sec. 49 of the said Act, the following shall be deemed to be inserted, namely,—

“(1-A) For the purpose of sub-section (1) land, which is held with and attached to a house, and is reasonably required for the enjoyment and use of the house, shall be deemed to be part of the house.”

U. P. (3)

**THE UNITED PROVINCES TOWN IMPROVEMENT
(APPEALS) ACT (III OF 1920)**

An Act to modify certain provisions of the United Provinces Town Improvement Act, 1919

WHEREAS it is expedient to modify the provisions of the United Provinces Town Improvement Act, 1919, so as to provide in certain cases for an appeal to the High Court from the awards of the Tribunal constituted under that Act ;

It is hereby enacted as follows :

1. Short title.—This Act may be called the United Provinces Town Improvement (Appeals) Act, 1920.

2. Definitions.—In this Act—

- (1) "High Court" means, in area, the High Court of Judicature at Allahabad and in Oudh the Court of Judicial Commissioner of Oudh ; and
- (2) "Tribunal" has the same meaning as in the United Provinces Town Improvement Act, 1919.

3. Appeals from the awards of the Tribunal.—(1) Notwithstanding anything contained in the United Provinces Town Improvement Act, 1919, and subject to the provisions of sub-section (2), an appeal shall lie to the High Court in any of the following cases, namely,—

- (a) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of Sec. 64 of the said Act ;
- (b) where the decision is that of the Tribunal ; and
- (i) the President of the Tribunal grants a certificate that the case is a fit one for appeal ; or
- (ii) the High Court grants special leave to appeal :

Provided that the High Court shall not grant any special leave unless the President has refused to grant a certificate under sub-clause (i) and the amount in dispute is not less than five thousand rupees.

(2) An appeal under clause (b) of sub-section (1) shall only lie on one or more of the following grounds, namely,—

- (i) the decision being contrary to law or to some usage having the force of law ;
- (ii) the decision having failed to determine some material issue of law or usage having the force of law ;
- (iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

4. Procedure in such appeals.—Subject to the provisions of Sec. 3, the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall, so far as may be, apply to appeals under this Act.

5. **Execution of orders of High Court.**—Every order passed by the High Court on appeal under this Act shall be enforced by a Court of Small Causes within the local limits of whose jurisdiction the award or order appealed against was made, as if it were a decree of that Court.

6. **Period of limitation for such appeals**—An appeal under Sec. 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of Art. 156 of the First Schedule to the Indian Limitation Act, 1908. [Notes :—now Art. 116(a) (90 days) of Act No. 36 of 1963]

U. P. (4)

The Uttar Pradesh Zamindari Abolition and Land Reforms Act.

(U. P. ACT No. I of 1951)

AS PASSED BY THE UTTAR PRADESH LEGISLATURE

*Received the assent of the President on January 24, 1951
and published in the U. P. Gazette, Extraordinary,
dated January 26, 1951.*

An Act to provide for the abolition of the Zamindari system which involves intermediaries between the tiller of the soil and the State in the Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition and to make provision for other matters connected therewith.

Preamble.

Whereas it is expedient to provide for the abolition of the Zamindari system which involves intermediaries between the tiller of the soil and the States in the Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent on such abolition and acquisition and to make provision for other matters connected therewith ;

* * *

Acquisition of the interests of intermediaries and its consequences.

Vesting of estates in the State.

4. (1) As soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State and ;

as from the beginning of the date so specified (hereinafter called the date of vesting), all such estates shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances.

(2) It shall be lawful for the State Government, if it so considers necessary, to issue, from time to time, the notification referred to in sub-section (1) in respect only of such area or areas as may be specified and all the provisions of sub-section (1) shall be applicable to and in the case of every such notification.

Collector to take over estates.

25. Upon the publication of the notification under Section 4, it shall be lawful for the Collector or any officer appointed by him in this behalf—

(a) to take charge of any estate or part of an estate and of all interests vested in the State under the provisions of this chapter, and take or cause to be taken such steps and use or cause to be used such force as may, in the opinion of the collector or the officer so appointed, be necessary for this purpose.

(b) to enter upon any land, building or other place forming part of any estate acquired under the provisions of this chapter and make a survey or take measurement thereof or do any other act which he considers necessary for carrying out the purposes of this Act,

(c) to require any person to produce to such authority as may be specified any books, accounts, or other documents relating to any estate or part thereof and to furnish to such authority such other information as may be specified or demanded, and

(d) if the books, accounts and other document are not produced as required, to enter upon any land, building or other place and seize and take possession of such books, accounts and other documents.

Assessment of compensation.

Intermediary entitled to receive compensation for acquisition of his estate.

27. Every intermediary whose rights, title or interest in any estate are acquired under the provisions of this Act shall be entitled to receive and be paid compensation as hereinafter provided.

Proceedings relating to assessment and payment of compensation.

31. All proceedings relating to assessment of compensation for any estate acquired under Section 4 and the payment thereof to the intermediary entitled thereto shall be had before the Compensation Officer within whose jurisdiction the estate acquired is situate.

Amount of compensation.

54. The amount payable as compensation to an intermediary in respect of his interest in the *mahals* to which the Compensation Assessment Roll relates shall, except where the intermediary is a *thekadar*, be eight times the net assets mentioned in the Roll.

Amount of compensation payable to a *thekadar*.

55. Where the interest of the intermediary is held by a *thekadar*, an amount, which shall be calculated on the principles contained in Section 54 on the net assets mentioned in the Compensation Assessment Roll of such intermediary shall be the total compensation payable both to the intermediary and the *thekadar* in respect of their interests in the estate and the Compensation Officer shall apportion the amount between them having regard to—

(a) the premium, if any, paid at the commencement of the *theka* or the lease,

(b) the term and conditions of the *theka* ;

(c) loss, if any caused to the *thekadar* as a result of the determination of the *theka* ;

(d) the gross assets and the net assets of the estate or estates under the *theka* ;

(e) the amount payable annually by the *thekadar* ;

(f) the fact that total rights of the intermediary are being acquired and that those rights were held by him in perpetuity while the rights of the *thekadar* are of a limited character and

(g) Such other matters as may be prescribed.

Uttar Pradesh (5)

**U. P. LAND ACQUISITION (REHABILITATION OF REFUGEES)
ACT NO. XXVI OF 1948**

(as modified up to 1956)

[Received assent of the Governor on 19.5.48 and was published in U. P. Gazette, on 5.6.48.]

An act to provide for the acquisition of land for the rehabilitation of refugees from Pakistan.

Whereas it is expedient to acquire land required for the rehabilitation of refugees from [* * *] Pakistan and to prescribe an expeditious procedure for the determination of compensation to be paid an account of such acquisition.

It is hereby enacted as follows.

1. Short Title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act, 1948.

(2) It shall extend to the whole of the Uttar Pradesh.

¹[(3)] It shall come into force at once.

2. Definitions.—In this Act unless there is any thing repugnant to the subject or context,—

- (i) "Compensation Officer" means the Compensation Officer appointed by general or special order by State Government ;
- (ii) "Court" means the Principal Civil Court of Original Jurisdiction in the area ;
- (iii) "Land" includes benefits to arise out of land and things attached to the earth or permanently fastened to any thing attached to earth.
- (iv) "person interested" has the meaning attached to it in Section 3 of Land Acquisition Act, 1894 ;
- (v) "Prescribed" means prescribed by the rules made under this Act ;
- (vi) "State Government" means the Government of the Uttar Pradesh ;
- (vii) "refugee" means any person who was a resident in any place forming part of Pakistan and who, on account of partition or civil disturbances or the fear of such disturbances, has on or after the first day of March, 1947 migrated to any place in the U. P. and has been since residing there.
- (viii) "builder" means a society registered under the Co-operative Societies Act 1912, or the Local authority and includes such other persons as the State Government may, by notification in Gazette, declare in their behalf.

3. Procedure of requisition.—If, in the opinion of the State Government or such other authority as the State Government may appoint in that behalf (hereinafter called "the appointed authority"), it is necessary or expedient so to do for the erection of [houses, shops and work-shops] for the rehabilitation of refugees, the State Government or the appointed authority, as the case may be, may by order requisition any land by serving on the owner and occupier thereof, and, when the owner or the occupier is not readily traceable or the ownership or the right of occupation of the land is in dispute, or owing to the number of persons entitled as owner or occupier, it is not reasonably convenient to serve every one of them separately, by publishing in such manner as may be specified in that behalf, a notice stating that the State Government or the appointed authority, as the case may be, has decided to requisition it in pursuance of this section and may make such further orders including an order for the taking of possession as appear to it to be necessary or expedient in connection with the requisitioning.

¹ Act extended to (1) Rampur district by Rampur (Application of Lands) Act 1950 enforced on 30.12.49. (2) Banaras district by Banaras (Appli. of Lands) Order 1949, by Notice No 3262 (1) XVI, dt. 30.11.49 enforced on same date. (3) Tehri Garhwal district by Tehri Garhwal (Appli. of Land) Order 1949, by Notice 3262 (2) XVII dt. 30.11.49 on same date.

4. Use of requisitioned land—When any land has been requisitioned under Section 3 the State Government or such other persons as may be authorised in that behalf may use it, in such manner as may appear to it to be expedient, for the purpose of erecting [houses, shops, and workshops] for the rehabilitation of refugees, [and providing other amenities].

5. Application for requisition by a builder—A builder may in the prescribed manner apply to the State Government to acquire any land, as may be specified in the application, for the purpose of erecting [buildings, shops and workshops] for the rehabilitation of refugees for providing amenities connected therewith.

6. Declaration of State Government on application by a Builder—

(1) Whenever the State Government is satisfied after such enquiry as it may consider necessary that the land is needed and is suitable for the erection of [houses, shops, and workshops] for the rehabilitation of refugees or for the provision of amenities directly connected therewith, the State Government or the appointed authority, shall require the builder, to enter into an agreement with the State Government, providing to the satisfaction of the State Government, for the following matters, viz., :—

- (i) the payment to the State Government of the cost of acquisition ;
 - (ii) the transfer on such payment of the land to the builder ;
 - (iii) the terms on which the land shall be held by the builder ;
 - (iv) the time within which the condition on which and the manner in which the [houses, shops and workshops] shall be erected, [workshops started and amenities provided].
 - (v) the disposal by sales, exchange, lease or otherwise of the land acquired or of the building erected thereon ;
 - (vi) Water supply, lighting, drainage inclusive of sewerage and surface drains and sewage disposal ;
 - (vii) housing standard and location of market places and other places for common use of the residents in the area acquired ;
 - (viii) resumption, with or without the constructions and the penalty which may be imposed on the builder and the manner in which it may be enforced, and,
 - (ix) generally for such other matters as the State Government may prescribe.
- (2) Every such agreement shall, as soon as may be after its execution be published in the Official Gazette and shall thereupon have the same effect as if it had formed part of this Act.

7. Acquisition of land after execution of the Agreement under section 6 :—

- (1) After the agreement mentioned in Section 6 has been made and the builder has deposited such amount as the State Government may direct, the State Government or the appointed authority may acquire the land by publishing in the Official Gazette a notice to the effect that it has decided to acquire such land, and may take such further order including an order for the taking of possession, as appear to it to be necessary or expedient in connection with the acquisition.

- (2) Upon the publication of notice under sub-section (1) the land acquired shall vest absolutely in the State Government from the beginning of the day on which the notice is so published and all other provisions of the Act in so far as they are applicable shall apply as if it had been acquired under the next following Section.

8. (1) the State Government or the appointed authority, may with a view to requisitioning any land under Section 3, or acquiring it under Section 7, or determining the compensation under Section 10 and 11, by order—

- (a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be so specified, [in the said order].

(2) Without prejudice to the powers conferred by sub-section (1), any person or authority appointed in this behalf by the State Government may enter any land and inspect it for the purpose of determining whether, and if so in what manner, an order under Sections 3 and 7 should be made in relation to such land; or with a view to securing compliance with any order made under the said sections.

9. **Acquisition of land**—(1) Where any land has been requisitioned under Section 3, the State Government may at any time, acquire it by publishing in the Official Gazette, a notice to the effect that it has decided to acquire it in pursuance of this Section.

(2) When a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisitioning of such land shall end forthwith.

10. **Payment of compensation**—(1) When any land is requisitioned under Section 3 there shall be paid to every person interested, such compensation as may be agreed upon in writing between such person and the State Government or the appointed authority, in respect of—

- (a) the requisition of such land, and
(b) any damage done during the period of requisitioning to such land other than that which may have been sustained by any natural causes ;

(2) When no such agreement can be reached the State Government or appointed authority shall refer the matter with its recommendations, as to the amount of compensation and the reasons therefor, to the Compensation Officer and also, direct the person claiming compensation to appear before such officers on such date as may be specified.

(3) Upon the receipt of any reference under sub-section (2) the Compensation Officer shall, on the date fixed or on any other date to which the hearing may be postponed, hear such person and after such further enquiry as may deem fit, determine, the amount of compensation which shall be final and conclusive.

11. **Amounts of compensation**—(1) Whenever any land is acquired under Section 7 or 9 there shall be paid compensation the amount of which shall be determined by the Compensation Officer in accordance with .

the principles set out in clauses *First*, *Second*, and *Third* of sub-section (1) and sub-section (2) of Section 23 of the Land Acquisition Act, 1894 ;

PROVIDED that the market value referred to in clause *First* of the said sub-section shall be deemed to be the market value of such land on the date of publication of the notice under Section 7 or 9 as the case may be, or on the 1st day of September 1939 whichever is less :

PROVIDED further that where such land has been held by the owner thereof under a purchase made before the first day of April 1948 but after the first of September 1939 by a registered document [or a decree for pre-emption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land in the decree for pre-emption as the case may be]

(2) When the compensation has been determined under sub-section (1) the Compensation Officer shall make an award in accordance with the principles, in so far as they are not inconsistent with this Act or any rule made thereunder, set out in Section 11 of the Land Acquisition Act, 1894.

(3) When any person aggrieved by an award made under sub-section (2) make an application within the period prescribed requiring the matter to be referred to the [District] Court, the Compensation Officer shall refer it to the decision of the Court having jurisdiction.

(4) The provisions of the Land Acquisition Act, 1894 shall, in so far as they are not inconsistent with the provisions of this Act, apply in respect of any reference made to the [District] Court under sub-section (3)-

12. Release from requisition.—(1) When any land requisitioned under Section 3 is not acquired and is to be released from requisitioning, the State Government or the Appointed Authority as the case may be, may after making such inquiry if any, as it considers necessary, specify, by order in writing the person who appears to it to be entitled to the possession of such land.

(2) The delivery of possession of such land to the person specified in the order made under sub-section (1) shall discharge of any liability of the State Government to deliver possession to, such person as may have rightful claim to possession thereof, but shall not prejudice any right in respect of such land which any other person may be entitled by due provisions of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person to whom the possession of any land requisitioned under Section 3 is to be delivered, cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the State Government shall publish in the Official Gazette, a notice declaring that such land is released from requisitioning and shall cause a copy thereof to be affixed on some conspicuous part of such land.

(4) When a notice referred to in sub-section (3) is published in the Official Gazette the land specified in such notice shall cease to be subject to requisitioning from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof.

(5) Upon delivery of possession under sub-section (2) or (4) the State Government shall not be liable for any compensation or other claim in respect of such land.

13. Court not to question any order passed under the Act.—(1) No order made in exercise of any power conferred by or under this Act shall be called in any Court except as provided in this Act.

(2) When an order purports to have been made and signed by any authority in exercise of any power conferred under this Act, a Court shall within the meaning of Indian Evidence Act, 1872, presume that such order was so made by that authority.

14. Protection of persons acting under the Act.—(1) Except as provided in this Act no suit or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

15. Rule making power.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide—

- (a) for the appointment, functions and jurisdictions of Compensation Officers and others prescribed authorities ;
- (b) the conduct and hearing of references that may be made to Compensation Officer, and the procedure to be followed by such officer ;
- (c) the form of application to be made by builder for the acquisition of land ;
- (d) the form of notices to be given and the mode of service ;
- (e) for any matter which is to be or may be prescribed.

PART III

CHAPTER XV

WEST BENGAL (I)

The Land Acquisition Act, 1 of 1894

¹(As modified in its application to West Bengal up to 1963)

An Act to amend the law for the acquisition of land for public purposes and for companies.

Whereas it is expedient to amend the law for the acquisition of land needed for public purposes and for companies and for determining the

¹ The Central Act was amended by Bengal Act V of 1911, II of 1934, VII of 1948, West Bengal Act XXXVII of 1951, XIV of 1956, XXX of 1963.

amount of compensation to be made on account of such acquisition : It is hereby enacted as follows :—

PART I

PRELIMINARY

1.....(1) (same as in Central Act).

²(2) (Do)

(3) (Do)

2.....(Do)

3. **Definitions:**—In this Act, unless there is something repugnant in the subject or context,—

(a) (same as in Central Act)

(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land ³[cultivates the land or any portion of it as a bargadar.]

⁴[**Explanation :—**A **bargadar** is a person who under the system generally known as *adhi*, *barga*, or *bhag* cultivate the land of another person on condition of delivering a share of the produce of such land to that person].

(c) (same as in Central Act)

⁵(d) the expression “Court” means a principal Civil Court of Original Jurisdiction, and includes the Court of any Additional Judge, Subordinate Judge or *Munsiff* whom the (State Government) may appoint, by name or by virtue of his office, to perform, concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits and, in the case of a *Munsiff* up to the limits of the pecuniary jurisdiction with which he is vested under Section 19 of the Bengal Agra and Assam Civil Courts Act, 1887. (XII of 1887).

(e) (same as in Central Act)

(ee) Do

(f) Do

(g) Do

² Substituted by the Adaptation of Laws Order (No. 2) 1956 for “Part B States”.

³ These words were added with retrospective effect by Sec. 3(i) of the Land Acquisition (West Bengal Amendment) Act XXX of 1963.

⁴ Added by West Bengal Amendment Act XXX of 1963.

⁵ Substituted by S. 3 of Land Acquisition (Bengal Amendment) Act II of 1934.

PART 11

Acquisition

Preliminary Investigation

Publication of Preliminary Notification and Power of Officers thereupon.

- | | | |
|-----|---|------------------|
| 4. | (same as in Central Act) | |
| 5. | Do | |
| 5A. | Do | |
| 6. | (1), (2) & (3) | Do |
| | ⁶ [× × × ×] | |
| 7. | Do | |
| 8. | Do | |
| 9. | Do | |
| 10. | Do | |
| 11. | ⁷ Do | |
| 12. | Do | |
| 13. | Do | |
| 14. | Do | |
| 15. | Do | |
| 16. | Do | |
| 17. | (1) | ⁸ Do |
| | (2) | Do |
| | (3) | ⁹ Do |
| | (4) | ¹⁰ Do |

⁶ For the purpose of acquisition of land for the Board of Trustees for the Improvement of Calcutta under the Calcutta Improvement Act (Bengal Act V of 1911), after section 6, sec. 6A was deemed to be inserted. See under West Bengal (2) in this Chapter. The Howrah Improvement Act XIV of 1956 was similarly amended by adding Sec. 6A. See West Bengal (3) in this Chapter. Vide S. 71, and paragraph 1A of the schedule to that Act.

⁷ For the purpose of acquisition of land for the Board of Trustees for the Improvement of Calcutta under the Improvement Act No. V of 1911, before the words "make an award under his hand" the words "after considering such evidence as may be adduced by the Board under sub-section (2) of section 50" shall be deemed to be inserted. Vide S. 71 of and paragraph 1B of the schedule to that Act.

So also in Howrah Improvement Act XIV of 1956 same additions are made, vide S. 70 of, and paragraph 3 of schedule to that Act. See under West Bengal (2) and (3) of this Chapter.

⁸ In Calcutta Improvement Act V of 1911 for words "and 24" the words, figures and letters "24 and 24A" shall be deemed to be substituted, vide sec. 71 of and paragraph 3 of the schedule to that Act. So also in case of Howrah Improvement Act XIV of 1956 in sec. 70 of and paragraph 4 of the schedule to that Act.

⁹ In sub-section (3) of sec. 17 for the figures "24" words "or section 24A" shall be deemed to be inserted in Sec. 71 of, and paragraph 4(1) of the schedule of Calcutta Improvement Act V of 1911 and in sec. 70 of and paragraph 5(1) of the schedule to Howrah Improvement Act XIV of 1956.

¹⁰ In Calcutta Improvement Act in sec. 17 further sub-sections (4), (5), (6) and sec. 17A are added.

PART III

Reference to Court and Procedure therein

18. (same as in Central Act)

19. Do

20. Do

21. Do

22. Do

23. (i) Do

First, Do

Secondly, Do

Thirdly, Do

Fourthly, Do

Fifthly, if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change¹¹.

Sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under sec. 6 and the time of the Collector's taking ¹²[possession of the land ; and]

¹³*Seventhly*, the loss of earning, if any, caused to the person interested, in consequence of the acquisition of the land, where earning was derived directly from such land.

¹⁴(2) (same as in Central Act)

¹⁵(3)

¹⁶(4) Compensation payable to *bargadar* for loss of earning under clause *seventhly* of sub-section (1) shall not exceed three times the net average annual income which was derived or might be derived from the land during three years immediately preceding the date of acquisition.

Explanation :—The net annual income of a *bargadar* in any year shall be taken to be fifty percent of the total produce of the land cultivated by him in that year.

¹¹ The word "and" in Central Act is omitted by sec. 4(1) of Land Acquisition (West Bengal Amendment) Act, XXX of 1963.

¹² The word "and" is added by sec. 4(1) *ibid*.

¹³ Clause 'seventhly' was added with retrospective effect by sec. 4(1) (iii), *ibid*.

¹⁴ For the purpose of Calcutta Improvement Act sub-section (2) of section 23 shall be deemed to be omitted. *Vide* sec. 71 of and paragraph 9(1) of the Schedule to that Act.

¹⁵ In Calcutta Improvement Act a sub-section (3) to sec. 23 is added. *Vide* sec. 71 and paragraph 9(2) of the schedule to that Act and under West Bengal (2) of this Chapter....in Howrah Improvement Act *vide* s. 70 and paragraph 7(2) of the Schedule to that Act. *See* under West Bengal (3), of this Chapter.

¹⁶ Sub-section (4) was added with retrospective effect by section 4(2) of the Land Acquisition (West Bengal Amendment) Act XXX of 1963.

Notes

Post-notification sale :—In *State of West Bengal v. Secretary, Union Club, Purulia* (a), a case under section 23(1) of the L.A. Act 1 of 1894, it was held that “the Court can look into a post-notification sale deed even if it is executed six months after the date of notification if the Court finds that after the publication of the notification, the price of land in the locality has not been affected by such notification, the onus to prove such facts is on the party who objects to any such transaction of sale being relied on by the court for ascertaining the market value of the acquired land”. Naturally it is the Government that will object to such evidences. But this has created a dangerous precedence, in as much as, generally the value of land is affected and enhanced whenever a land is acquired for a public development-project and such is also the presumption. When the Collector has given some basis for his valuation, the onus of proving that the Collector’s valuation is wrong or illegal, shifts to the claimant who is in the position of a plaintiff. (For ‘Burden of proof’ see page 269 ante). Therefore the onus should be on the claimant to show that the Collector’s valuation is wrong and that it should be higher than that on the basis of a post-notification sale after he has proved that the valuation has not been affected by such notification. As otherwise the Government shall have to pay a much higher price in many cases. There may be some *bonafide* transactions such as, a deed based on an agreement entered into prior to notification but was executed on a day after the notification, (b). (For Post-notification sale see notes under the same heading at page 299 ante).*

24. ¹⁷(same as in Central Act)

25. (same as in Central Act)

26. (same as in Central Act)

27. ¹⁸(same as in Central Act)

28. (Do)

PART IV

Apportionment of compensation.

29. (same as in Central Act.)

30. Do

(a) *State of West Bengal v. Secretary, Union Club, Purulia*, 76 C. W. N. 296.

(b) *Ahmed Kasem Saheb v. L. A. Officer, Ramnad*, A. I. R. 1942, M. 665.

* This case-law is inserted here because the Parts I & II of this book were already printed when it was reported.

¹⁷ For the purpose of Calcutta Improvement Act V of 1911 after sec. 24 a new section 24A has been added. Vide S. 71 of, and paragraph 11 of the Schedule to the said Act and West Bengal (2) in this chapter. So also for the purpose of Howrah Improvement Act XIV of 1956. Vide s. 70 and paragraph 9 of the Schedule to that Act and West Bengal (3) in this chapter.

¹⁸ For the purposes of Calcutta Improvement Act and Howrah Improvement Act sub-section (2) of sec. 27 shall be deemed to be omitted. Vide s. 71 and paragraph 12A of the schedule of C. I. Act and sec. 70 and paragraph 10 of the schedule to H. I. Act

PART V**Payment**

31. (same as in Central Act.)

32. Do

¹⁹[32A. **Compensation awarded to minors and lunatics to be paid :—**If, according to an award made by the Collector under this Act the person interested entitled to any compensation or costs awarded (hereinafter in this section referred to as the payee) is a minor or a lunatic then, notwithstanding anything to the contrary in this Act or in any other law, the Collector shall have the power to pay the amount of such compensation or costs before it is deposited in the court under sub-section (2) of section 31 or it may be paid by the court after it is so deposited but before it is invested under section 32,—

(a) where the payee is a minor, to the guardian of the minor, and

(b) where payee is a lunatic, to the manager of the estate of the lunatic appointed under the Indian Lunacy Act 1912 (4 of 1912.)

Provided that except in the case of following classes of guardians, that is to say,

(i) a natural guardian,

(ii) a guardian appointed by the will of a minor's father or mother.

(iii) a guardian appointed or declared by a Court, and

(iv) a person empowered to act as or exercise the powers of a guardian by or under any enactment relating to Court of Wards, no payment as aforesaid shall be made unless the guardian furnishes security in accordance with prescribed rules.

²⁰33. Same as in Central Act excepting for the words "in the last preceding section" words "section 32" are substituted.

34. Do

PART VI**Temporary occupation of land**

35. (same as in Central Act)

36. Do

37. Do

PART VII

38. (same as in Central Act)

38A. Do

39. Do

40. Do

¹⁹ Inserted by Land Acquisition (West Bengal Amendment) Act XXIV of 1964.

²⁰ Amended by West Bengal Act XXIV of 1964.

- | | |
|------|----------------------------|
| 41. | (same as in Central Act) |
| 42. | Do |
| 43. | Do |
| 44. | Do |
| 44A. | Do |
| 44B. | Do |

PART VIII

Miscellaneous.

- | | |
|-----|--|
| 45. | (same as in Central Act) |
| 46. | Do |
| 47. | Do |
| 48. | ²¹ Do |
| 49. | ²² (Same as in Central Act |
| 50. | Do |
| 51. | Do |
| 52. | Do |
| 53. | Do |
| 54. | Do |
| 55. | Do |

West Bengal (2)

THE CALCUTTA IMPROVEMENT ACT, 1911¹ BENGAL ACT V OF 1911

As modified up to the 1st April 1967.

(20th September, 1911)

An Act to provide for the improvement and expansion of Calcutta.

WHEREAS it is expedient to make provision for the improvment and expansion of Calcutta by opening up congested areas, laying out or

²¹ For the purpose of Calcutta Improvement Act Sec. 48A and 48B added after Sec. 48. Vide s. 71 and paragraph 13 of the schedule to that Act. So also in Howrah Improvement Act, Vide s. 70 and paragraph 11 of the schedule to that Act.

²² For the purpose of Calcutta Improvement Act sub-section (1) of section 49 is substituted. Vide S. 71 and paragraph 14 of schedule to that Act. So also in case of Howrah Improvement Act. Vide S. 70 and paragraph 12 of the schedule to that Act. Also see West Bengal (2) and (3) in this Chapter.

¹ Local Extent—This Act (except ss. 82 to 86) extends only to the Calcutta Municipality. See s. 1(3). Section 82 originally extended throughout Bengal as constituted in the year 1911. Section 83 extends to—(1) railway stations in the Calcutta and Howrah Municipalities, and (2) certain landing-places in the Port of Cal-

altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, ²[clearing *bustees*, executing housing schemes and schemes for the rehousing of persons displaced by the execution of improvement schemes, acquiring land for the said purposes and all works relating thereto], and otherwise, as hereinafter appearing ;

AND WHEREAS it is expedient that a Board of Trustees should be constituted and invested with special powers for carrying out the objects of this Act ;

AND WHEREAS the sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the provisions of this Act, which affect Acts passed by the Governor-General of India in Council.

AND WHEREAS the sanction of the Governor-General has also been obtained, under section 43 of the Indian Councils Act, 1861, to the enactment of the provisions of Chapter V of this Act, relating to taxation ;

It is hereby enacted as follows :—

CHAPTER I

Preliminary.

1. **Short title, commencement and extent.** (1) This Act may be called the Calcutta Improvement Act, 1911.

(2) It shall come into force on such day³ as the ⁴(State Government) may, by notification, direct.

(3) Except as otherwise hereinafter provided, this Act shall extend only to the Calcutta Municipality : but any provision which extends only to the Calcutta Municipality may be extended by the ²(State Government) entirely or in part, by notification, under the procedure prescribed by section 148 to any specified area in the neighbourhood of that Municipality.

cutta ; Section 84 extends to the Port of Calcutta ; Section 85 extends to Calcutta ; Section 86 has the same local extent as ss. 82, 83 and 84. So far as it affects s. 82, it has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I. Several sections of the Act (e. g., ss. 44 to 52, 54 to 56, 63, 66, 149, 163, 167, 168) contemplate that operations of the Board of Trustees constituted under it may be carried on in areas beyond the Calcutta Municipality, and section 1(3) gives power to extend provisions of the Act to such areas.

² These words within square brackets were substituted for the words "acquiring land improvement schemes" by s. 2 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

³ i. e., the 2nd January, 1912, see notification No. 1148, dated the 30th October, 1911.

⁴ The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Notes

Under the provisions of the Calcutta Improvement Act, an improvement scheme has to be brought about in the manner following, viz., : First the scheme is mooted, then objections are heard and thereafter a scheme is finalised. The Government then either sanctions the scheme or a modified scheme and it is only thereafter that compulsory acquisition proceedings of the land are taken up. It is only when the Government has sanctioned the improvement scheme under section 48 of the Calcutta Improvement Act, that the Board proceeds to execute the scheme under section 49. The execution of the scheme starts after the sanction of the Government. Before the sanction it only appertains to the character of a proposal.

Before the scheme is sanctioned by the Government under Section 48 of the Calcutta Improvement Act, no notification can be published under Section 4 of the Land Acquisition Act,

By Section 71 the entire L. A. Act is applicable subject to modifications made in the schedule.

The reason for the amendment of the Land Acquisition Act (by Bengal Act XXXII of 1955), is to avoid duplication in the procedure in as much as under Section 43 to 47 of the Calcutta Improvement Act objections are entertained against an improvement scheme before the Scheme is finalised and accordingly where the improvement scheme involves land, a second set of proceedings for entertaining and disposing of objections under the Land Acquisition Act before the land could be acquired is redundant.

Accordingly by the amending Act, a notice under section 43 (2) of the Calcutta Improvement Act has been taken to be equivalent to a notification under section 4 of the Land Acquisition Act and proceedings under sections 45 and 47(1) of the Calcutta Improvement Act have been taken to be equivalent to proceedings under section 5A of the Land Acquisition Act and Notification under section 49 of the Calcutta Improvement Act has been taken to be equivalent to a declaration under section 6, of the Land Acquisition Act. (a).

Further by the said Amending Act XXXII of 1955, sec. 9 (Vide the Schedule) no statutory allowance of 15 P. C. can be given, as sub-section (2) of Sec. 23 of L. A. Act has been omitted, but interest on compensation shall have to be allowed on basis of Sec. 34 of the L. A. Act which is applicable apart from question of equity (b).

2. Definitions. In this Act, unless there is anything repugnant in the subject of context,

¹(1a) "betterment fee" means the fee prescribed by section 78A in respect

(a) *Muneswar Ram v. Second L. A. Collector*, 71 C.W.N. 78.

(b) *Bolai Lal Pal v. State of West Bengal*, 70 C. W. N. 363 (D.B.), *Province of Bengal v. Prawn Kissen Law*, 54 C. W. N. 801 : A. I. R. 1950, Cal. 498.

¹ Clause (1a) was inserted by s. 2 of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1931).

of an increase in value of land resulting from the execution of an improvement scheme :

- (a) "the Board" means the Board of Trustees for the improvement of Calcutta, constituted under this Act :
- ¹(aa) "building line" means a line (in rear of the street alignment) up to which the main wall of a building abutting on a projected public street may lawfully, extend :
- ²(b) "the Calcutta Municipality" means "Calcutta" as defined in clause (11) of section 5 of the Calcutta Municipal Act, 1951 :
- (c) "Chairman" means the Chairman of the Board :
- (d) "the Corporation" means the Corporation of Calcutta constituted under the said ³[Calcutta Municipal Act, 1951] :

* * * * *

- ⁵(f) "improvement scheme" means an improvement scheme as described in section 35D, but does not include a projected public street or a projected public park referred to in section 63 ;
- (g) "land" has the same meaning as in clause (a) of section 3 of the Land Acquisition Act, 1894 ;
- (h) "municipal assessment-book" means the assessment-book kept ⁶[under section 185 of the Calcutta Municipal Act, 1951] or the valuation and rating list prepared under ⁷[section 136 of the Bengal Municipal Act, 1932] ;
- (j) "notification" means a notification published in the ⁸[*Official Gazette*] ;
- (k) "Secretary to the Board" means the person for the time being appointed by the Board to discharge the functions of Secretary to the Board ;
- (l) the "Tribunal" means the Tribunal constituted under section 72 ;
- (m) "Trustee" means a Member of the Board ; and

¹ Clause (aa) was inserted by s. 2 (a) of the Calcutta Improvement (Amendment) Act, 1915 (Bengal Act III of 1915).

² Clause (b) was substituted for the original clause (b) by s. 3 (1) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII 1955).

³ These words within square brackets were substituted for the words "Calcutta Municipal Act, 1923" by s. 3 (2), *ibid*.

⁴ Clause (e) which was repealed by the Bengal Repealing and Amending Act, 1938 (Bengal Act I of 1939), is omitted.

⁵ Clause (f) was substituted for the original clause (f) by s. 3 (3) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁶ These words within square brackets were substituted for the words and figures "sections 143 of the Calcutta Municipal Act, 1923" by s. 3(4), *ibid*.

⁷ These words and figures within square brackets were substituted for the words and figures "section 103 of the Bengal Municipal Act, 1884" by the Bengal Repealing and Amending Act, 1938 (Bengal Act I of 1939).

⁸ These words within square brackets were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁹(n) the expressions “bustee”, “drain” “public street” and “street alignment” have the same meaning as in clauses (10), (26), (60) and (72), respectively, of section 5 of the Calcutta Municipal Act, 1951.

CHAPTER II

THE BOARD OF TRUSTEES

Constitution of the Board

3. Creation and incorporation of Board :—The duty of carrying out the provisions of this Act shall, subject to the conditions and limitations hereinafter contained, be vested in a Board, to be called, “The Trustees for the Improvement of Calcutta” ; and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

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24. Power to make and perform contracts :—The Board may ¹⁰[perform all such functions or] enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of this Act.

¹¹24A. Power of Board to determine if execution of work, etc., should be by contract :—The Board may determine either generally for any class of cases or specially for any particular case whether the work should be executed or materials purchased by contract or otherwise.

25. Execution of contracts and approval of estimates :—(1) Every such contract shall be made on behalf of the Board by the Chairman :

⁹Provided that a contract involving an expenditure exceeding five thousand rupees shall not be made by the Chairman without the previous sanction of the Board :

¹²Provided further that a contract involving an expenditure exceeding five lakhs of ruppes shall not be made without the previous sanction of the State Government ;

(2) Every estimate for the expenditure of any sum for carrying out any of the purposes of this Act shall be subject to the approval of the authority who is empowered by sub-section (1) to make or sanction the making of a contract involving the expenditure of a like sum.

⁹ Clause (n) was substituted for the original clause (n) by s. 3(5) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

¹⁰ These words within square brackets were inserted by s. 16 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

¹¹ Section 24A was inserted by s. 17, *ibid*.

¹² These provisos were substituted for the original proviso by s. 18(a), *ibid*.

(3) Sub-sections (1) and (2) shall apply to every variation¹³ * * * of a contract or estimate, as well as to an original contract or estimate.

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35. Delegation of certain of Chairman's functions :—(1) The Chairman may, by general or special order in writing, delegate to any officer of the Board any of the Chairman's powers, duties or functions under this Act or any rule made here-under, except those conferred or imposed upon or vested in him by sections 18, 21, 29, 55, 108, 112, 116, 118, 154 and 158 :

Provided as follows :—

- (a) the Chairman shall not delegate his power under section 25 to make on behalf of the Board any contract involving an expenditure exceeding one thousand rupees ;
 - (b) the Chairman shall not delegate his power under section 32 to make appointments to offices carrying a salary of more than one hundred rupees *per mensem* ;
 - (c) the Chairman shall not delegate to any officer his power under section 32 to grant leave to, or to reduce, suspend, dismiss, or dispense with the services of, any employee, unless such employee was appointed by such officer by virtue of a delegation of the Chairman's powers of appointment conferred by that section.
- (2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.

CHAPTER III

¹⁴[IMPROVEMENT SCHEMES]

¹⁵35A. Undertaking of works and incurring of expenditure for development of areas :—The Board may, subject to the provisions of this Act, undertake any works and incur any expenditure for the improvement and development of any area to which this Act applies and for the framing and execution of such improvement schemes as may be necessary from time to time.

¹⁵35B. Matters to be considered when framing improvement scheme :—When framing an improvement scheme in respect of any area, regard shall be had to—

- (a) the nature and the conditions of neighbouring areas and of Calcutta as a whole ;

¹³ The words "or abandonment" were omitted by s. 18 (b) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

¹⁴ This heading within square brackets was substituted for the original heading by s. 22 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

¹⁵ Sections 35A, 35B, 35C and 35D were inserted by s. 23, *ibid.*

- (b) the several directions in which the expansion of Calcutta appears likely to take place, and
- (c) the likelihood of improvement schemes being required for other parts of Calcutta.

^{12a}**35C. Matters to be provided for in improvement schemes :—**(1) An improvement scheme may provide for all or any of the following matters, namely :—

- (a) the acquisition by the Board of any land in the area comprised in the scheme, which will in their opinion be required for or affected by the execution of the scheme ;
- (b) the laying out or re-laying out of the land comprised in the scheme ;
- (c) the demolition, alteration or reconstruction of buildings or portions of buildings situated on the land which it is proposed to acquire in the said area ;
- (d) the construction of any building which the Board may consider necessary to erect for carrying out any of the purposes of this Act ;
- (e) the laying out or construction or alteration of streets (including bridges, causeways, culverts), if required, and the levelling, paving, metalling, flagging and channelling of such streets and planting of flower bushes or trees on the sides of such streets ;
- (f) the sewerage and draining of such streets and the provision therein of water, lighting and other sanitary conveniences ordinarily provided in a municipality ;
- (g) raising, lowering or levelling of any land in the area comprised in the scheme ;
- (h) the provision of accommodation for any classes of inhabitants ;
- (i) the formation and retention of open spaces, gardens, parks, play-grounds, lakes, and the provision therein of athletic tracks and stadiums, recreation buildings and structures and other necessary aids to field and aquatic sports, arboriculture and any other objects which the Board consider desirable to provide ;
- (j) controlling the use of land developed by the Board by zoning or reserving areas for specific purposes ;
- (k) any other matters consistent with this Act, which the Board may think fit

(2) When areas preserved for specific purposes, under clauses (i) and (j) of sub-section (1), it shall be the duty of the Corporation or the Commissioners of the municipality, within whose jurisdiction such areas are situated, to prohibit and prevent their use in violation of such purposes.

^{12a}**35D. Types of improvement schemes :—**An improvement scheme may be of one of the following types or a combination of any two or more of such types or of any special features thereof, that is to say—

- (a) a general improvement scheme,
- (b) a street scheme,

(c) a housing accommodation scheme,

(d) a re-housing scheme.

^{13a}36. **When general improvement scheme may be framed** :—Whenever it appears to the Board, whether upon official representation made under section 37 or without such representation :—

(a) that any buildings in any area which are used as dwelling places are unfit for human habitation, or

(b) that danger to the health of the inhabitants of any area or of a neighbouring area is caused by—

(i) the narrowness, closeness and bad arrangement and conditions of streets or buildings or groups of buildings in such area, or

(ii) the want of light, air, ventilation or proper conveniences in such area, or

(iii) any other sanitary defects in such area, or

(c) that any area is undeveloped or has been developed without a satisfactory plan or design and that it is necessary to develop or re-develop it on a better plan after incorporating all or some of the improvements mentioned in section 35C,

the Board may pass a resolution to the effect that a general improvement scheme ought to be framed in respect of such area and may then proceed to frame such a scheme.

37. Authority for making an official representation for a general improvement scheme :—(1) An official representation referred to in section 36 may be made by the Corporation—

(a) of their own motion, or

(b) on a written complaint by the ^{14a}[Commissioner] of the Corporation; or

(c) in respect of any area comprised in a municipal ward,—on a written complaint signed by twenty-five or more residents of such ward who are liable to pay either the owner's share or the occupier's share of the consolidated rate leviable under ^{15a}[the Calcutta Municipal Act, 1951].

(2) If the Corporation decide not to make an official representation on any complaint made to them under clause (b) or clause (c), they shall cause a copy of such complaint to be sent to the Board, with a statement of the reasons for their decision.

38. Consideration of official representations :—(1) The Board shall consider every official representation made under section 37, and, if satisfied as to the truth thereof and to the sufficiency of their resources, shall decide whether a general improvement scheme to carry such representation into effect should be framed forthwith or not, and shall forthwith intimate their decision to the Corporation.

^{13a} This section 36 was substituted for the original section 36 by s. 24 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

^{14a} This word within square brackets was substituted for the words "Health Officer" by s. 25(1) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

^{15a} Substituted by s. 25 (2). *abid.*

(2) If the Board decide that it is not necessary or expedient to frame a general improvement scheme forthwith, they shall inform the Corporation of the reasons for their decision.

(3) If the Board fail, for a period of twelve months after the receipt of any official representation made under section 37 to intimate their decision thereon to the Corporation,

or if the Board intimate to the Corporation their decision that it is not necessary or expedient to frame a general improvement scheme forthwith, the Corporation may if they think fit, refer the matter to the ¹⁶[State Government].

(4) The ¹⁶[State Government] shall consider every reference made to it under sub-section (3), and

(a) if it considers that the Board ought, under all the circumstances, to have passed a decision within the period mentioned in sub-section (3), shall direct the Board to pass a decision within such further period as the ¹⁶[State Government] may think reasonable, or

(b) if it considers that it is, under all the circumstances, expedient that a scheme should forthwith be framed, shall direct the Board to proceed forthwith to frame a scheme.

(5) The Board shall comply with every direction given by the ¹⁶[State Government] under sub-section (4).

39. When street scheme may be framed :—Whenever the Board are of opinion that, for the purpose of—

(a) providing building-sites, or

(b) remedying defective ventilation, or

(c) creating new, or improving existing, means of communication and facilities for traffic, or

(d) affording better facilities for conservancy,

it is expedient to lay out new streets or to alter existing streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as they may think fit.

¹⁷39A. Housing accommodation scheme :—Whenever the Board are of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of persons in any area to which this Act applies, the Board may frame a scheme to be called a housing accommodation scheme, for the aforesaid purpose.

¹⁷39B. Rehousing persons displaced by improvement schemes :—The Board may frame schemes (in this Act called re-housing schemes) for the construction, maintenance and management of such and so many dwellings, shops and other classes of accommodation as they may consider ought to be provided for persons who—

(a) are displaced by the execution of any improvement scheme sanctioned under this Act, or

¹⁶ See foot-note 12 *ante*.

¹⁷ Sections 39A, 39B and 39C were inserted by s. 26 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

- (b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the State Government for sanction under this Act.

1639C. Provisions to be made for rehousing of bustee-dwellers in the case of certain schemes :—(1) When a general improvement scheme mentioned in section 36 or a housing accommodation scheme mentioned in section 39A or a combination of both, is likely to involve displacement of persons dwelling in a *bustee*, provisions for rehousing such persons shall be made either in the same scheme or by another scheme and the scheme or schemes, as the case may be, together with a statement of the rent or rents proposed to be charged for such rehousing, shall be submitted to the State Government for its approval before any steps are taken under section 43.

(2) In considering the scheme or schemes submitted under sub-section (1), the State Government shall have regard to the rent or rents indicated in the said scheme or schemes for accommodation to be provided for the displaced *bustee*-dwellers, and may, if necessary, give financial aid to the Board in order that the rent may be such as, in the opinion of the State Government, is reasonable, and also lay down the conditions for giving such aid before the scheme or schemes is or are sanctioned under section 48.

(3) The Board shall be entitled to proceed to execute under section 49 any scheme referred to in sub-section (1) provided that no *bustee*-dwellers are displaced until arrangements for rehousing them have previously been made.

43. Preparation, publication and transmission of notice as to improvement scheme, and supply of documents to applicants :—(1) When any improvement scheme has been framed, the Board shall prepare a notice, stating—

- (a) the fact that the scheme has been framed,
- (b) the boundaries of the area comprised in the scheme, and
- (c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire ¹⁷[and of the land in regard to which it is proposed to recover a betterment fee], may be seen at reasonable hours.

(2) The Board shall—

- (i) cause the said notice to be published weekly for three consecutive weeks in the ¹⁸[*Official Gazette*] and in local newspapers, with a statement of the period within which objections will be received, and
- (ii) send a copy of the notice to the ¹⁹[Commissioner of the Corporation] and to the Chairman of any Municipality constituted under the

¹⁶ and ¹⁷ See *ante*.

¹⁸ These words within square brackets were inserted by s. 3 of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1931).

¹⁹ The words "Executive Officer of the Corporation" were originally substituted for words "Chairman of the Corporation" by the Bengal Repealing and Amending Act, 1938 (Bengal Act I of 1939) and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by s. 28 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

Bengal Municipal Act, ²⁰[1932], in which ²¹[and to the General Manager of the Calcutta Metropolitan Water and Sanitation Authority within whose jurisdiction] any portion of the area comprised in the scheme is situated.

(3) The Chairman shall cause copies of all documents referred to in clause (c) of sub-section (1) to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 138.

²²44. Transmission to Board of representation by Corporation, Municipality or Authority as to improvement scheme :—The [Commissioner of the Corporation, the Chairman of any Municipality and the General Manager of the Calcutta Metropolitan Water and Sanitation Authority, to whom a copy of a notice has been sent under clause (ii) of sub-section (2) of section 43, shall, within a period of sixty days from the receipt of the said copy forward to the Board any representation which the Corporation, Municipality or the Authority may think fit to make with regard to the scheme.

45. Service of notice as to proposed acquisition of land or recovery of betterment fee :—(1) During the thirty days next following the first day on which any notice is published under section 43 in respect of any improvement scheme, the Board shall serve a notice on—

- (i) every person whose name appears in the municipal assessment-book as being primarily liable to pay the owner's share of the consolidated rate, or the rate on the annual value of holdings, as the case may be, in respect of any land which the Board propose to acquire in executing the scheme ²³[or in regard to which they propose to recover a betterment fee], and
 - (ii) the occupier (who need not be named) of each premises or holding, entered in the municipal assessment-book, which the Board propose to acquire in executing the scheme.
- (2) Such notice shall—
- (a) state that the Board propose to acquire such land ²⁴[or to recover such betterment fee] for the purpose of carrying out ²⁵[an improvement scheme], and
 - (b) require such person, if he dissents from such acquisition ²⁶[or from

²⁰ These figures were substituted for the figures "1884" by the Bengal Repealing and Amending Act, 1938 (Bengal Act I of 1939).

²¹ The words within square brackets were inserted by s. 88(3) of, and schedule III to, Calcutta Metropolitan Water and Sanitation Authority Act, 1966 (West Bengal Act XIII of 1966).

²² This section was substituted by s. 88 (3) and Schedule III, *ibid*.

²³ These words within square brackets were inserted by s. 4 (1) of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1931).

²⁴ These words within square brackets were inserted by s. 4(2) of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1931).

²⁵ These words within square brackets were substituted for the words "a general improvement scheme or a street-scheme, as the case may be" by s. 30 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

²⁶ These words within square brackets were inserted by s. 4(3) of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1931).

the recovery of such betterment fee], to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by, or by the order of the Chairman.

46. Furnishing of copy of, or extracts from, the municipal assessment book :—The ²⁷[Commissioner of the Corporation], and the Chairman of any Municipality constituted under the Bengal Municipal Act, ²⁸[1932], in any part of which this section is for the time being in force, shall, respectively furnish the Chairman, at his request, with a copy of, or extracts from, the municipal assessment-book at such charges as may be fixed by rule made under section 137.

47. Abandonment of improvement scheme, or application to State Government to sanction it :—(1) After the expiry of the periods respectively prescribed under section 43, clause (i), and by section 44 and section 45, clause (b), in respect of any improvement scheme, the Board shall consider any objection, representation and statement of dissent received thereunder, and, after hearing all persons making any such objection, representation or dissent who may desire to be heard, the Board may either abandon the scheme or apply to the ²⁹[State Government] for sanction to the scheme, with such modifications (if any) as the Board may consider necessary.

(2) Every application submitted under sub-section (1) shall be accompanied by—

- (a) a description of, and full particulars relating to, the scheme, and complete plans and estimates of the cost of executing the scheme ;
- (b) a statement of the reasons for any modifications made in the scheme as originally framed ;
- (c) a statement of objections (if any) received under section 43 ;
- (d) any representation received under section 44 ;
- (e) a list of the names of all persons (if any) who have dissented, under section 45, clause (b), from the proposed acquisition of their land ³⁰[or from the proposed recovery of a betterment fee], and a statement of the reasons given for such dissent ; and
- (f) a statement of the arrangements made or proposed by the Board for the re-housing of persons ³¹ * * * who are likely to be displaced by the execution of the scheme.

(3) When any application has been submitted to the ³²[State Government] under sub-section (1), the Board shall cause notice of the fact to be published

²⁷ The words "Executive Officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by s. 2 and the First Schedule of the Bengal Repealing and Amending Act, 1938 (Bengal Act I of 1939), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by s. 31 of the Calcutta Improvement Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

²⁸ See foot-note 20, *ante*.

²⁹ See foot-note 12 *ante*.

³⁰ These words within square brackets were inserted by s. 5 of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1931).

³¹ The words "of the poorer and working classes" were omitted by s. 32 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

³² See foot-note 12 *ante*.

for two consecutive weeks in the ³³[*Official Gazette*] and in local newspapers.

48. Power to sanction or reject improvement scheme :—The ³²[State Government] may sanction, either with or without modification, or may refuse to sanction, any improvement scheme submitted to it under section 47.

49. Notification of sanction to improvement scheme :—(1) Whenever the ³²[State Government] sanctions an improvement scheme, it shall announce the fact by notification and the Board shall forthwith proceed to execute the scheme.

(2) The publication of a notification under sub-section (1), in respect of any scheme, shall be conclusive evidence that the scheme has been duly framed and sanctioned.

50. Alteration of improvement scheme after sanction :—At any time after any improvement scheme has been sanctioned by the ³²[State Government] and before it has been carried into execution, the Board ³⁴[may alter or cancel it] :

Provided as follows :—

- (a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than five *per cent.*, of such cost, such alteration shall not be made without the previous sanction of the ³²[State Government] ;
- (b) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the ³²[State Government]. the procedure prescribed in the foregoing sections of this chapter shall, so far as as applicable, be followed, as if the alteration were a separate scheme ;
- ³⁵(c) if, owing to changes made in the course of a scheme, any land not previously liable under the scheme to the payment of a betterment fee, becomes liable to such payment, the provisions of sections 43, 45 and 47 shall, so far as they are applicable, be followed in any such case ;
- ³⁶(d) no scheme shall be cancelled without giving the Corporation or the Municipality, as they case may be, an opportunity to express its views within sixty days of the receipt of the notice of the cancellation and without previous sanction of the State Government.

51. Combination of improvement schemes :—Any number of areas in reepect of which improvement schemes have been, or are proposed to be, framed, may at any time be included in one combined scheme.

53. Width of streets :—No street laid out or altered by the Board shall be of less width than—

³² See *ante*.

³³ See foot-note 18 *ante*.

³⁴ These words within square brackets were substituted for the words "may alter it" by s. 33(1) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

³⁵ Clause (c) was added by s. 6 of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1931).

³⁶ Clause (d) was added by s. 33(2) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

(a) forty feet, if the street be intended for carriage traffic, or

(b) twenty feet, if the street be intended for foot traffic only ;

Provided as follows :—

(i) the width of an existing street need not be increased to the minimum required by this section, if the Board consider it impracticable to do so ;

(ii) nothing in this section shall be deemed to prevent the Board from laying out service passages for sanitary purposes of any width less than twenty feet.

³⁷54. Transfer to Board, for purposes of improvement scheme, of building or land vested in the Corporation or in the Commissioners of a Municipality :

—(1) Whenever any building, or any street, square or other land, or any part hereof, which—

(a) is situated in the Calcutta Municipality and is vested in the Corporation, or

(b) is situated in any part of any Municipality constituted under the Bengal Municipal Act, ³⁸[1932], in which this section is for the time being in force, and is vested in the Commissioners of that Municipality,

is within the area of any improvement scheme and is required for the purposes of such scheme, the Board shall give notice accordingly to the ³⁹[Commissioner of the Corporation] or the Chairman of such Municipality, as the case may be, and such building, street, square, other land or part, shall thereupon vest in the Board subject in the case of any building or any land, not being a street or square, to the payment of compensation, if any, to the Corporation or to such Commissioners, as the case may be, under sub-section (3) :

⁴⁰Provided that the Corporation or the Commissioners, as the case may be, shall be allowed reasonable opportunity to remove at their cost any underground pipes, cables or other fixtures belonging to them if they so desire.

(2) Where any land vests in the Board under the provisions of sub-section (1) and the Board make a declaration to the Corporation that such land will be retained by the Board only until it revests in the Corporation as part of a street or an open space, under a declaration made by the Corporation under sub-section (1) of section 65 or a resolution passed by the Board under sub-section (2) of section 65, as the case may be, no compensation shall be payable by the Board to the Corporation in respect of that land.

³⁷ Section 54 was substituted for the original section by s. 2 of the Calcutta Improvement (Amendment) Act, 1923 (Ben. Act IX of 1923).

³⁸ See foot-note 20, *ante*.

³⁹ The words "Executive Officer of the Corporation" were substituted for the words "Chairman of the Corporation" by the Bengal Repealing and Amending Act, 1938 (Bengal Act I of 1939) and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by s. 35 (a) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁴⁰ This proviso was added by s. 35 (b) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

(3) Where any land or building vests in the Board under sub-section (1) and no declaration is made by the Board that the land will be so retained, the Board shall pay to the Corporation, or to the Commissioners, as the case may be, as compensation for the loss resulting from the transfer of such land or building to the Board, a sum equal to the market value of the said land or building ⁴¹[as on the date of the publication of the notification under section 49] and where any building, situated on land in respect of which a declaration has been made by the Board under sub-section (2) is vested in the Board under sub-section (1), like compensation shall be payable in respect of such building by the Board.

(4) If, in any case where the Board have made a declaration to the Corporation in respect of any land under sub-section (2), the Board retain or dispose of the land contrary to the terms of the declaration, so that the land does not revert in the Corporation as contemplated under such declaration, like compensation shall be payable by the Board to the Corporation in respect of such land for the loss resulting from the non-transfer of such land to the Corporation, such compensation not to be less than the market value which would have been payable for the said land under the provisions of sub-section (3).

(5) If any question of dispute arises—

- (a) as to whether compensation is payable under sub-section (3) or sub-section (4), or
 - (b) as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) or sub-section (4), or
 - (c) as to whether any building or street, or square or other land, or any part thereof is required for the purposes of the scheme,
- the matter shall be referred to the ⁴²[State Government] whose decision shall be final.

55. Transfer of private street or square to Board for purposes of improvement scheme :—(1) Whenever any street or square or part thereof which is not vested in the Board or in the Corporation or in the Commissioners of any Municipality constituted under the Bengal Municipal Act, ⁴³[1932], is required for executing any improvement scheme, the Board shall cause to be affixed in a conspicuous place in or near such street, square or part, a notice, signed by the Chairman, and

- (a) stating the purpose for which the street, square or part is required, and
- (b) declaring that the Board will, on or after a date to be specified in the notice, take over charge of such street, square or part from the owner thereof ;

and shall simultaneously send a copy of such notice to the owner of such street, square or part.

⁴¹ These words within square brackets were substituted for the words beginning with "at the time when" and ending with "as amended by this Act" by s. 35(c) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁴² See foot-note 12 *ante*.

⁴³ See foot-note 20, *ante*.

(2) After considering and deciding all objections (if any) received in writing before the date so specified, the Board may take over charge of such street, square or part from the owner thereof ; and the same shall thereupon vest in the Board.

(3) When the Board alter or close any street or square or part thereof which has vested in them under sub-section (2), they shall pay reasonable compensation to the previous owner for the loss of his rights therein.

(4) If the alteration or closing of any such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto, or to residents in the neighbourhood, the Board—

(i) shall forthwith provide some other reasonable means of access for the use of persons who were entitled to use such street, square or part as a means of access to any property or place, and

(ii) if the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

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61. Provision of facilities, and payment of compensation, when work is executed by Board in public street vested in them :—(1) When any work is being executed by the Board in any public street vested in them, the Board shall, so far as may reasonably be practicable, make adequate provision for—

(a) the passage or diversion of traffic ;

(b) securing access to all premises approached from such street ; and

(c) any drainage, water-supply or means of lighting which is interrupted by reason of the execution of the work.

(2) The Board shall pay reasonable compensation to any person who sustains special damage by reason of the execution of any such work.

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64. Reference of disputes to Tribunal :—(1) If any question or dispute arises—

(a) between the Board and the previous owner of any street or square or part thereof which has vested in the Board under section 55 and has been altered or closed by them, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or

(b) between the Board and any person who was entitled otherwise than as a mere licensee, to use as a means of access any street or square or part thereof which has vested in the Board under section 55.

(i) as to whether the alteration or closing of such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or

(ii) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section 55 are reasonably sufficient, or

(iii) as to the sufficiency of any compensation paid or proposed to be paid under the said sub-section (4), or

(c) between the Board and any person, as to the sufficiency of any compensation paid or proposed to be paid to him under section 61, section 62 or section 63.

the matter shall be determined by the Tribunal, if referred to it, either by the Board or by the claimant, within a period of three months from—

in case (a) or case (b)—the date on which the street or square or part thereof was altered or closed by the Board, or

in case (c)—the date on which the said person was informed of the decision of the Board fixing the amount of compensation to be paid to him ; and the determination of the Tribunal shall be final.

(2) If a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Board shall be final.

(3) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses, documents and costs which it would have if the Land Acquisition Act, 1894, as modified by section 71 of this Act, were applicable to the case.

65. Vesting in Corporation of streets laid out or altered, and open spaces provided, by the Board under an improvement scheme :—⁴⁴(1) When the Board are of opinion—

(a) that any street laid out or altered by them has been duly levelled, paved, metalled, flagged, channelled, sewered and drained in the manner provided in the plan sanctioned by the State Government under section 48,

(b) that such lamps, lamp-posts or other apparatus as are necessary for the lighting of such street have been provided, and

(c) that water and other sanitary conveniences ordinarily provided in a Municipality have been duly provided in such street,

they shall report this fact to the Corporation ; and it shall be the duty of the Corporation within three months from the date of receipt of such report, after such inquiry as it thinks fit to make either to declare the street to be a public street by written notice affixed in some conspicuous position in such street, whereupon such street shall vest in the Corporation and be maintained, kept in repair lighted and cleared by the Corporation ; or, if the Corporation is of opinion that certain works are required to be done before such declaration may be made, to require the Board to complete such works ;

⁴⁴ These sub-sections (1) and (2) were substituted for the original sub-section (1) by s. 38(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

Provided as follows :—

- (a) no engineering or accommodation work not included in the scheme as sanctioned by the State Government under section 48 shall be required to be done by the Board except with the latter's consent as a condition of such transfer ;
- (b) when certain works in connection with the street can be taken up only after a lapse of time to allow for consolidation of roads or the erection of buildings on both sides, the declaration shall not be put off till they are completed, but shall be made, within the time prescribed under this sub-section on the Board giving an undertaking that they shall complete the works when asked by the Corporation to do so.

⁴⁵(2) As soon as the works required to be done by the Corporation as aforesaid are completed, the Board shall report the fact to the Corporation ; and it shall be the duty of the Corporation to declare the street to be a public street by written notice affixed in some conspicuous position in such street within two months from the date of receipt of the report, on the expiry of which period the liability of the Board to maintain the street and the street and the street lighting or to pay the Corporation rates assessed on the lands comprised within such street shall cease.

⁴⁶(3) When any open space for purposes of ventilation or recreation has been provided by the Board in executing any improvement scheme, it shall, on completion, be transferred to the Corporation by resolution of the Board, and shall thereupon vest in and be maintained at the expense of the Corporation :

Provided that the ⁴⁷[Corporation of Calcutta] may require the Board before any such open space is so transferred, to enclose, level, turf, drain and lay out such space and provide footpaths therein, and, if necessary, to provide lamps and other apparatus for lighting it.

⁴⁸(4) If any difference of opinion arises between the Board and the ⁴⁷[Corporation of Calcutta] in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the ⁴⁸[State Government] whose decision shall be final.

66. Application of section 65 to other Municipalities :—If section 65 be extended, by notification, under section 1, sub-section (3), to any Municipality in the neighbourhood of the Calcutta Municipality, it shall be construed as if the references therein to the General Committee and the Corporation were references to the Commissioners of the former Municipality.

⁴⁵ See foot-note 44 *ante*.

⁴⁶ Original sub-sections (2) and (3) were renumbered as sub-sections (3) and (4) respectively by s. 38(b) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁴⁷ Substituted by Bengal Act 1 of 1939,

⁴⁸ See foot-note 12 *ante*.

CHAPTER IV

ACQUISITION AND DISPOSAL OF LAND

Acquisition by agreement

68. Power to purchase or lease by agreement :—The Board may enter into an agreement with any person for the purchase or leasing by the Board from such person of any land ⁴⁹ * * * or any interest in such land ⁵⁰ [for carrying out any of the purposes of this Act].

⁵¹*Explanation.*—The power of the Board to acquire land or any interest in such land by purchase or lease may be exercised not only in respect of lands falling within an improvement scheme already framed but also in respect of lands relating to which the Board may frame improvement schemes in future and shall be exercised after obtaining the previous sanction of the State Government.

Compulsory Acquisition

69. Power to acquire land under the Land Acquisition Act, 1894 :—The Board may, with the previous sanction of the ⁵² [State Government], acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

⁵³*Explanation.*—The power of the Board to acquire land under the Land Acquisition Act, 1894, may be exercised not only in respect of land falling within an improvement scheme already framed but also in respect of lands relating to which the Board may frame improvement schemes in future.

70. Tribunal to be constituted :—A Tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894.

71. Modification of the Land Acquisition Act, 1894 :—For the purpose of acquiring land under the said Act for the Board,—

- (a) the Tribunal shall (except for the purposes of section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge under the said Act ;
- (b) the said Act shall be subject to the further modifications indicated in the schedule ;
- (c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses and to compel the production

⁴⁹ The words "which the Board are authorized to acquire" were omitted by s. 39(1)(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁵⁰ These words within square brackets were added by s. 39 (1) (b), *ibid*.

⁵¹ This *Explanation* was added by s. 39(2), *ibid*.

⁵² See foot-note 12 *ante*.

⁵³ This *Explanation* was added by s. 40 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure 1908 ; and

- (d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and ⁵⁴[shall, subject to the provisions of section 77A, be final].

72. Constitution of Tribunal :—(1) The said Tribunal shall consist of a President and two assessors.

(2) The President of the Tribunal shall be either—

⁵⁵(a) a person who was or has been a member of the Judicial service as defined in article 236 of the Constitution of India for at least ten years and held a rank not inferior to that of a Subordinate Judge for at least three years ; or

⁵⁶(b) a barrister or advocate who has practised as such in the Calcutta High Court for not less than ten years.

(3) The President of the Tribunal and one of the assessors shall be appointed by the ⁵⁷[State Government], and the other assessor shall be appointed by the Corporation ⁵⁸[within the time fixed by the State Government], or, in default of the Corporation, by the ⁵⁷[State Government] :

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or is, for any of the reasons mentioned in section 9, disqualified for appointment as a Trustee.

(4) The term of office of each member of the Tribunal shall be two years ; but any member shall, subject to the proviso to sub-section (3), be eligible for reappointment at the end of that term :

⁵⁹ Provided that a member who is an assessor shall not be eligible for reappointment for more than a further term of two years.

(5) The ⁵⁷[State Government] may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as a member of the Tribunal.

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, the ⁵⁷[State Government] or (if the person whose place is to be filled was appointed by the Corporation) the Corporation, or, in default of the Corporation, the ⁵⁷[State Government] shall forthwith appoint a fit person to be a member in his place.

(7) All appointments made under this section shall be published by notification.

⁵⁴ These words within square brackets were substituted for the words "shall be final" by s. 41 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal XXXII of 1955).

⁵⁵ This clause (a) was substituted for the original clause (a) by s. 42 (1) (a), *ibid*.

⁵⁶ This clause (b) was substituted for the original clause (b) by s. 42 (1) (b), *ibid*.

⁵⁷ See foot-note 12 *ante*.

⁵⁸ These words within square brackets were inserted by s. 42(2) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁵⁹ This proviso was added by s. 42 (3), *ibid*.

73. Remuneration of members of Tribunal :—Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the ⁵⁷[State Government] may prescribe.

74. Officers and servants of Tribunal :—(1) The President of the Tribunal shall, from time to time, prepare a statement showing—

(a) the number and grades of the clerks and other officers and servants ⁶⁰[who] he considers should be maintained for carrying on the business of the Tribunal.

(b) the amount of the salary to be paid to each such officer and servant, and

(c) the contributions payable under section 146 in respect of each such officer and servant.

(2) The President of the Tribunal shall, from time to time, make rules—

⁶¹(a) prescribing the qualifications, the period of service, the age of superannuation and other conditions of service of the officers and servants of the Tribunal ;

(i) for regulating the grant of leave of absence, leave allowances and acting allowances to the officers or servants of the Tribunal ; and

(ii) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Tribunal (other than any ⁶²[servant of the Government] in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions, as may be prescribed by such rules and, with the sanction of the Board for supplementing, such contributions out of the funds of the Board :

⁶³Provided that a servant of the ⁶⁴[Government] employed as an officer or servant of the Tribunal shall not be entitled to leave or leave allowances otherwise than as may be prescribed by the conditions of his service under the ⁶⁴[Government] relating to transfer to foreign service.

(3) All statements prepared under sub-section (1), and all rules made under sub-section (2), shall be subject to the previous sanction of the ⁶⁵[State Government].

(4) Subject to any directions contained in any statement prepared under sub-section (1) and any rules made under sub-section (2), and for the time

⁶⁰ This word within square brackets was substituted for the word "whom" by s. 43 (a), *ibid*.

⁶¹ This clause was inserted by s. 43(b) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁶² The words "servant of the Crown" were originally substituted for the words "servant of the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937 and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁶³ This proviso was substituted for the original proviso by Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶⁴ See foot-note 18 *ante*.

⁶⁵ See foot-note 12 *ante*.

being in force, the power of appointing, prompting and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

75. Payments by Board on account of Tribunal :—The remuneration prescribed under section 73 for members of the Tribunal, and the salaries, leave allowances and acting allowances prescribed under section 74 for officers and servants of the Tribunal shall be paid by the Board to the President of the Tribunal for distribution.

76. Power to make rules for Tribunal :—(1) The President of the Tribunal may, from time to time, with the previous sanction of the ⁶⁵[State Government], make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by the Tribunal.

(2) All such rules shall be published by notification.

77. Award of Tribunal how to be determined :—(1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,—

(a) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail ;

(b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of assessors if the President of the Tribunal considers their presence unnecessary ; and when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal ; and

(c) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court.

⁶⁶77A. Appeal :—(1) An appeal shall lie to the High Court from an award under this Chapter, in any of the following cases, namely :—

(a) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of section 77 ;

(b) where the decision is that of the Tribunal, and—

(i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(ii) the High Court grants special leave to appeal :

Provided that the High Court shall not grant such special leave unless the President of the Tribunal has refused to grant a certificate under sub-clause (i) and the amount in dispute is five thousand rupees or upwards.

⁶⁵ See foot-note 12 ante.

⁶⁶ Section 77A was inserted by s. 44 of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

(2) An appeal under clause (b) of sub-section (1) shall only lie on (one or more of) the following grounds, namely :—

- (i) the decision being contrary to law or to some usage having the force of law ;
- (ii) the decision having failed to determine some material issue of law or usage having the force of law ;
- (iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

(3) Subject to the provisions of sub-sections (1) and (2), the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall so far as may be, apply to appeals under this section.

(4) An appeal under this section shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of article 156 of the First Schedule to the Indian Limitation Act, 1908.

(5) The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the High Court on appeal under this Act as if it were a decree made by himself.

Abandonment of Acquisition

78. Abandonment of acquisition in consideration of special payment :—

(1) In any case in which the ⁶⁷[State Government] has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

(2) The Board shall admit every such application if it—

(a) reaches them before the time fixed by the Collector, under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(3) If the Board ^{68**} admit any such application, they shall forthwith inform the Collector ; and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, ⁶⁹[and if the Board decide to allow the application they shall proceed] to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or, with the permission of the Board, at any time before the Collector has taken possession of the land, under section 16 of the Land Acquisition Act, 1894, the person from whom

⁶⁷ See foot-note 2 ante.

⁶⁸ The words "decide to" were omitted by s. 45(a) (i) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁶⁹ These words within square brackets were substituted for the words "and the Board shall proceed" by s. 45(a)(ii) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

the Board have arranged to accept the sum so fixed may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board, either—

- (i) to pay the said sum three years after the date of the agreement, or
- (ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest ⁷⁰[at such rate not exceeding six *per cent. per annum* as the ⁷¹(State Government) may fix by notification,] and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the Board may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (4) be not paid on the date on which it is due, the sum fixed by the Board under sub-section (3) shall be payable on that date, in addition to the said instalment.

(8) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (4), any person may pay off the charge created thereby, with interest, ⁷²[at the rate fixed under the provisions of that clause] up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Board by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

— ⁷³(10) Notwithstanding anything contained in clause (ii) of sub-section (4) or in sub-section (8) the rate of interest payable, under the provisions of that clause or that sub-section, as the case may be, shall be, or continue to be, four *per cent. per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (3) before the date of the commencement of the Calcutta Improvement

⁷⁰These words within square brackets were substituted for the words "at the rate of six *per cent. per annum*" by s. 2(a) of the Calcutta Improvement (Amendment) Act, 1934 (Bengal Act II of 1935).

⁷¹See foot-note 12 *ante*.

⁷²These words within square brackets were substituted for the words "at the rate of six *per cent. per annum*" by s. 2(b) of the Calcutta Improvement (Amendment) Act, 1934 (Bengal Act II of 1935).

⁷³Sub-section (10) was inserted by s. 3(2) of the Calcutta Improvement (Amendment) Act, 1923 (Bengal Act IX of 1923).

(Amendment) Act, 1923, and the agreement in respect of the payment of the same is executed before, on or within two months after, that date.

⁷⁴ (11) Notwithstanding anything contained in clause (ii) of sub-section (4) or in sub-section (8), the rate of interest payable under the provisions of that clause or that sub-section, as the case may be, shall be, or continue to be, six *per cent. per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (3) on or after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, but before the date of the commencement of the Calcutta Improvement (Amendment) Act, 1934, and the agreement in respect of the payment of the same is executed during the period commencing with the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, and ending two months after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1934.

⁷⁵ (12) When an application has been made under sub-section (1) and the Board are of opinion that the whole or any part of the land belonging to the applicant is not required for the execution of the scheme but that it is necessary that some adjoining land should be purchased by the applicant and amalgamated with his and or the portion not so required, in order to conform to the general layout of the scheme, they may permit the applicant to execute an agreement to purchase the adjacent land abovementioned and may at the same time fix a fee in consideration of which the land not required for the execution of the scheme may be exempted from acquisition. The price of the land sold together with the sum fixed as exemption fee shall then be dealt with in the manner provided in sub-section (4), and if the whole sum payable or any part of it is kept outstanding, it shall be secured as a charge on the interest of the applicant in the total area of the land sold to the applicant and of the land exempted. Sub-sections (5), (7) and (8) shall apply to such agreements in the same manner as in the case of total abandonment under the foregoing provisions of this section.

⁷⁶ Betterment fee

⁷⁶ 78A. **Payment of betterment fee :—**(1) When by the making of any improvement scheme, any land in the area comprised in the scheme which is not required for the execution thereof will, in the opinion of the Board, be increased in value, the Board, in framing the scheme, may, in lieu of providing for the acquisition of such land, declare that a betterment fee shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of the scheme.

⁷⁴ Sub-section (11) was added by s. 2(c) of the Calcutta Improvement (Amendment) Act, 1934 (Bengal Act II of 1935).

⁷⁵ Sub-section (12) was added by s. 45(b) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁷⁶ This sub-heading and sections 78A, 78B, 78C, 78D, 78E, 78F and 78G were inserted by s. 7 of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1931).

(2) Such betterment fee shall be an amount equal to one-half of the increase in value of the land resulting from the execution of the scheme, and shall be calculated upon the amount by which the value of the land on the completion of the execution of the scheme estimated as if the land were clear of buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner.

76 78B. Assessment of betterment fee by Board :—(1) When it appears to the Board that an improvement scheme is sufficiently advanced to enable the amount of the betterment fee to be determined, the Board shall by a resolution passed in this behalf declare that for the purpose of determining such fee the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to every person on whom a notice in respect of the land to be assessed has been served under clause (i) of sub-section (1) of section 45 that the Board propose to assess the amount of the betterment fee payable in respect of such land under section 78A.

(2) The Board shall then assess the amount of betterment fee payable by each person concerned after giving such person an opportunity to be heard and such person shall within three months from the date of receipt of notice in writing of such assessment from the Board, inform the Board by a declaration in writing whether he accepts or dissents from the assessment.

(3) When the assessment proposed by the Board is accepted by the person concerned within the period specified in sub-section (2), such assessment shall be final.

(4) If the person concerned dissents from the assessment made by the Board or fails to give the Board the information required by sub-section (2) within the period specified therein, the matter shall be determined by arbitrators in the manner provided by section 78C.

77 78C. Settlement of betterment fee by arbitrators :—(1) For the determination of the matter referred to in sub-section (4) of section 78B, the ⁷⁷[State Government] shall constitute a panel of arbitrators consisting of two parts, the first part of which shall be composed of persons having special knowledge of the valuation of land and the second part of other suitable persons.

(2) When the Board have, in accordance with the provisions of section 78B, assessed the amount of betterment fee payable by all persons in respect of land in the area comprised in the scheme the Board shall serve a notice on all those persons who have dissented from the assessment made by the Board, requiring them to meet at such time and place as may be fixed by the Chairman for the purpose of electing an arbitrator.

(3) For each scheme there shall be a body of two arbitrators, one of whom shall be elected by vote by the persons present at the meeting referred to in sub-section (2) from one part of the panel; and the other shall be appointed by the ⁷⁷[State Government] from the other part of the panel :

Provided that for the purposes of a particular scheme the ⁷⁷[State Govern-

⁷⁶ See ante.

⁷⁷ See foot-note 12 ante.

ment] may, prior to the election referred to in this sub-section, if it thinks fit, modify either part of the panel.

(4) In the event of a difference of opinion on any matter between the two arbitrators, a third arbitrator ⁷⁸[who shall act as an umpire] shall be selected by lot from the first part of the panel, and ⁷⁹[the decision of the umpire on the matter shall be final].

(5) If an arbitrator dies, resigns, becomes disqualified, is removed under sub-section (6), or refuses to perform or in the opinion of the ⁷⁷[State Government] neglects to perform or becomes incapable of performing his functions, the authority who elected or appointed him shall forthwith elect or appoint a fit person to take the place of such arbitrator.

(6) If the ⁷⁷[State Government] is satisfied after such inquiry as it thinks fit that the arbitrator has misconducted himself, it may remove him.

(7) When ⁸⁰[an award has been made under this section by the arbitrators or the umpire, as the case may be,] they shall sign it and forward it to the Board, and such award shall subject to the provisions of sub-section (8) be final and conclusive and binding on all persons.

(8) If the ⁷⁷[State Government] is satisfied after such inquiry as it thinks fit that an award has been improperly procured or that an arbitrator has misconducted himself in connection with an award, the ⁷⁷[State Government] may set aside the award.

Provided that every party to such proceedings shall be entitled to appear before the arbitrators either in person or by his authorized agent.

⁷⁸78F. Board to give notice to persons liable to payment of betterment fee :—When the amount of all betterment fees payable in respect of land in the area comprised in the scheme has been determined under section 78B or section 78C, as the case may be, the Board shall, by a notice in writing to be served on all persons liable to such payment, fix a date by which such payment shall be made, and interest at the rate of six *per cent. per annum* upon any amount outstanding shall be payable from that date.

⁸¹78G. Agreement to make payment of betterment fee a charge on land :—(1) Any person liable to the payment of a betterment fee may, at his option, instead of making a payment thereof to the Board, execute an agreement with the Board to leave the said payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of six *per cent. per annum*, the first annual payment of such interest to be made one year from the date referred to in section 78F.

(2) Every payment due from any person in respect of a betterment fee and every charge referred to in sub-section (1) shall, notwithstanding anything contained in any other enactment and notwithstanding the existence of

⁷⁸These words within square brackets were inserted by s. 46 (a)(i) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁷⁹These words within square brackets were substituted for the words "the matter shall be decided by the votes of the majority of the three arbitrators" by s. 46(a) (ii), *ibid.*

⁸⁰These words within square brackets were substituted for the words, "the arbitrators have made their award under section 78C," by s. 46(b), *ibid.*

⁸¹See foot-note 76 *ante*.

any mortgage or other charge whether legal or equitable created either before or after the commencement of the Calcutta Improvement (Amendment) Act, 1931, be the first charge upon the interest of such person in such land.

(3) The provisions of sub-sections (7), (8) and (9) of section 78 relating, in the case of the payments mentioned in that section, to the non-payment of instalments of interest, the paying off of the charge with interest, and the restrictions in respect of suits against the Board shall apply, *mutatis mutandis*, to the payment of the money payable under an agreement made in pursuance of sub-section (1) and of the interest payable in respect thereof.

82 Acquisition on fresh declaration

82 80. Agreement or payment not to bar acquisition under a fresh declaration :—If any land, in respect of which an agreement has been executed or a payment has been accepted in pursuance of sub-section (4) of section 78, or in respect of which the payment of a betterment fee has been accepted in pursuance of sub-section (3) of section 78B, or has been made after its determination under section 78C, or in respect of which an agreement for such payment has been executed under section 78G, be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

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Rules

140. Sanction of State Government required to rules made under section 138 :—No rule made under section 138 shall have any validity unless and until it is sanctioned, with or without modification, by the ¹[State Government].

141. Publication of rules :—When any rule has been made under section 86 or section 137, and when any rule has been made under section 138 and duly sanctioned, it shall be published by the ²[State Government] by notification, and such publication shall be conclusive proof that the rule has been duly made.

142. Printing and sale of copies of rules :—(1) The Chairman shall cause all rules made under section 86, section 137 or section 138 and for the time being in force to be printed, and shall cause printed copies thereof to be delivered to any applicant on payment of a fee of two annas for each copy.

(2) Notice of the fact of copies of rules being obtainable at the said price, and of the place where and the person from whom the same are obtainable, shall be given by the Chairman by advertisement in local newspapers.

¹This sub-heading and section 80 were substituted for the original section 80 by s.10 of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1941).

²See foot-note 12 *ante*.

143. Exhibition of copies of rules :—Copies, in English and Bengali, of all rules made under section 137 or section 138 shall be hung or affixed in some conspicuous part of the Board's office and in such places of public resort affected by the rules as the Chairman may think fit.

144. Power of State Government to cancel rules made under section 138 :—The ⁸⁴[State Government] may at any time, by notification, cancel any rule made by the Board under section 138.

155. Indemnity to Board etc. :—No suit shall be maintainable against the Board, or any Trustee, or any officer or servnt of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any rule made hereunder.

156. Notice of suit against Board, etc. :—No suit shall be instituted against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of any act purporting to be done under this Act or any rule made hereunder.

until the expiration of one month next after written notice has been delivered or left at the Board's office or the place of abode of such officer, servant or person, stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims ;

and the plaint must contain a statement that such notice has been so delivered or left.

Compensation

161. General power of Board to pay compensation :—In any case not otherwise expressly provided for in this Act, the Board may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested, by this Act or any rule made or scheme sanctioned hereunder, in the Board or the Chairman or any officer or servant of the Board.

162. Compensation to be paid by offenders for damage caused by them :—(1) If, on account of any act or omission any person has been convicted of an offence against this Act or any rule made hereunder, and, by reason of the same act of omission of the said person, damage has occurred to any property of the Board, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate, as if it were a fine inflicted by him on the person liable therefor,

⁸⁴ See foot-note 12 ante,

Public Notices and Advertisements

163. Public notices how to be made known :—Every public notice given under this Act or any rule made hereunder shall be in writing over the signature of the Chairman.

and shall be widely made known in the locality to be affected thereby, by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspapers, or by any two or more of these means, and by any other means that the Chairman may think fit.

164. Newspapers in which advertisements or notices to be published :—Whenever it is provided by this Act or any rule made hereunder that notice shall be given by advertisement in local newspapers, or that notification or any information shall be published in local newspapers, such notice, notification or information shall be inserted, if practicable, in at least two English newspapers and two vernacular newspapers.

THE SCHEDULE

(Referred to in section 71)

Further Modifications in the Land Acquisition Act, 1894

1. Amendment of section 3 :—After clause (e) of section 3 the following shall be deemed to be inserted, namely :—

“(e) the expression ‘local authority’ includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911.”

¹ **1A. New section 6A :—**After section 6, the following section shall be deemed to be inserted, namely :—

Publication of notification, hearing of objections and declaration under the Calcutta Improvement Act to be substituted for those under sections 4, 5A and 6.

“6A. When acquisition is proposed to be made of land comprised within any improvement scheme framed by the Board and published under section 49 of the Calcutta Improvement Act, 1911—

(i) the publication of a notice of the improvement scheme under sub-section (2) of section 43 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as publication of a notification in the *Official Gazette* and giving public notice of the substance of such notification in the locality under section 4.

(ii) Proceedings under section 45 and sub-section (1) of section 47 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as proceedings under section 5A.

¹ Paragraph 1A was inserted by s. 74(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

- (iii) The publication of a notification under section 49 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as a declaration under section 6."

Notes.—The provisions in S. 6A of the Schedule and in S. 9 thereof are not retrospective but prospective with effect from 20th October 1955, (a).

1B. Amendment of section 11 :—In section 11, before the words "make an award under his hand" the words "after considering such evidence as may be adduced by the Board under sub-section (2) of section 50" shall be inserted.

2. *Rep. by s. 2 of the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922).*

3. **Amendment of section 15 :—**In section 15, for the word and figures "and 24" the figures, word and letter "24 and 24A" shall be deemed to be substituted.

4. **Amendment of section 17 :—**(1) In section 17, sub-section (3), after the figures "24" the words, figures and letter "or section 24A" shall be deemed to be inserted.

(2) To the said section 17 the following shall be deemed to be added, namely :—

"(4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Presidency Magistrate or a Magistrate of the first class to be unhealthy."

"(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them."

"(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

5. **New section 17A :—**After section 17 the following shall be deemed to be inserted namely :—

"17A. **Transfer of Land to Board :—**In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board ; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

6, 7, 8 and 9 :—(1) *Rep. by s. 2 of the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922).*

9. **Amendment of section 23 :—**³(1) Sub-section (2) of section 23 shall be deemed to be omitted.

(2) At the end of section 23 the following shall be deemed to be added, namely :—

(a) *Sushil Chandra Ghosh v. State of West Bengal*, A.I.R. 1971, Cal. 389 (D.B.).

² Paragraph 1B was inserted by s. 74(b), *ibid.*

³ This sub-paragraph (1) was inserted by s. 74(c)(i) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

“(3) For the purposes of clause *first* of sub-section (1) of this section,—

- ¹(a) when acquisition is proposed to be made by the Board of land comprised within any improvement scheme framed by the Board and published under section 49 of the Calcutta Improvement Act, 1911, the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of publication of the notice under sub-section (2) of section 43 of the said Act ; and in other cases, the market-value shall be deemed to be the market-value according to the disposition of the land at the date of publication of the notification relating thereto under section 4 ;*
- ²(bb) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;
- ³(bbb) if any person, without the permission of the Chairman required by section 63, sub-section (8), of the Calcutta Improvement Act, 1911, has erected, re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or building line of a projected public street ⁴[or having erected, re-erected or added to any wall or building as aforesaid with such permission fails to remove such wall or building or any specified portion thereof when so required by notice issued under sub-section (2) of the said section], then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded ;
- (c) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before ⁴[the date with reference to which the market-value is to be determined] such increase shall be disregarded, unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;
- (d) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ; and
- (e) if the market-value of any building is specially high in consequence the building being so overcrowded as to be dangerous to the

¹ This clause (a) was substituted for the original clauses (a) and (b) by s. 74(e)(ii), *ibid*.

* When a large area of land in an urban locality is acquired, in determining the market-value, the method of belting is appropriate. *Mathura Prosad Rajgharia v. State of West Bengal*, A.I.R. 1971, N. S. C. 1.

² Clauses (bb) and (bbb) were inserted by s. 9 of the Calcutta Improvement (Amendment) Act, 1915 (Bengal Act III of 1915).

³ These words within square brackets were inserted by s. 74(c)(iii) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

⁴ These words within square brackets were substituted for the words “the aforesaid declaration was published” by s. 74(c)(iv), *ibid*.

health of the inmates, such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding."

Notes.—This section has got no retrospective effect but prospective with effect from 20-10-55, (a)—*ibid*.

10. Amendment of section 24 :—For clause *seventhly* of section 24 the following shall be deemed to be substituted, namely :—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date ¹[with reference to which the market-value is to be determined], unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

11. New section 24A :—After section 24 the following shall be deemed to be inserted namely :—

"24A. **Further provisions for determining compensation :—**In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely :—

(1) When any interest in any land acquired under this Act has been acquired after the date ²[with reference to which the market-value is to be determined], no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(2) If, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state ;

(3) If, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, *minus* the cost of demolishing the building ;

³(4) If any tank in any area comprised within a scheme framed by the Board and published under section 49 of the Calcutta Improvement Act, 1911, is, on account of accumulation of filth, rubbish or putrid matter or of the percolation of foul water from the kitchen, court-yard, privy or urinal, or for any other cause, in an unhygienic condition or contains water which is discoloured or malodorous or unfit for use for domestic purposes, or is a source of nuisance or disease, then notwithstanding anything contained

¹ These words within square brackets were substituted for the words "of the publication of the declaration under section 6" by s. 74(d) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

² These words within square brackets were substituted for the words "of the publication of the declaration under section 6" by s. 74(e)(i), *ibid*,

³ Clause (4) was added by s. 74(e)(ii), *ibid*,

in any law for the time being in force, the Tribunal shall, in determining the amount of compensation, make such deduction from the market-value of the tank according to its present disposition as will, in their opinion, be a reasonable set-off against the cost to society in unhealthiness, disease and discomfort caused by the tank being kept in such an unhygienic or insanitary condition."

12. *Rep. by s. 2 of the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922).*

¹ 12A. Amendment of section 27 :—Sub-section (2) of section 27 shall be deemed to be omitted.

13. New sections 48A and 48B :—After section 48 the following shall be deemed to be inserted, namely :—

"48A. Compensation to be awarded when land not acquired within two years :—(1) If, within a period of two years from the date of the [issue of the public notice under sub-section (1) of section 9], in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

"48B. Sections 48 and 48A not to apply in certain cases :—No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 78 of the Calcutta Improvement Act, 1911."

³ 14. Amendment of section 49 :—For sub-section (1) of section 49, the following sub-section shall be deemed to be substituted, namely :—

(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building if the acquisition of the part will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable :

Provided that if any question shall arise as to whether the part proposed to be acquired will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable, the Collector shall refer the determination of such question to the Court and shall not take possession of such part until after the question has been determined.

¹ Paragraph 12A was inserted by s. 74(f) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

² These words within square brackets were substituted for the words "publication of the declaration under section 6" by s. 74(g), *ibid.*

³ The original paragraph 14 was repealed by s. 15 of the Calcutta Improvement (Amendment) Act, 1931 (Bengal Act VIII of 1941) and thereafter this paragraph 14 was inserted by s. 74(h) of the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955).

In deciding on such a reference the Court shall have regard only to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the remaining portion of the house, manufactory or building."

WEST BENGAL (3)

HOWRAH IMPROVEMENT ACT XIV OF, 1956

(Extracts.)

70. **Modification of the Land Acquisition Act, 1894**—For the purpose of acquiring land under the said Act for the Board,—

- (a) the Tribunal shall (except for the purposes of section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act,
- (b) the said Act shall be subject to the further modifications indicated in schedule I,
- (c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 : and
- (d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final.

SCHEDULE I

(Referred to in Section 70)

Further modifications in the Land Acquisition Act, 1894

1. **Amendment of section 3.**—After clause (e) of section 3, the following clause shall be deemed to be inserted, namely,

"(e1) the expression "local authority" includes the Board of Trustees constituted under the Howrah Improvement Act, 1956".

1A. **Amendment of section 4**—insertion of new section 4A in West Bengal Act XIV of 1956.

2. After Section 4 of the Howrah Improvement Act, 1956 (herein after referred to as the said Act), the following section shall be inserted, namely :—

"Constitution of the Board on appointment of executive Officer for Howrah Municipality under section 67A of the Bengal Municipal Act, 1932.

4A. Notwithstanding anything contained in this Chapter, when an Executive Officer has been appointed under section 67A of the Bengal Municipal Act, 1932, (Bengal Act XV of 1932) in respect of the Howrah Municipality, then, during the period for which the Executive Officer has been appointed;—

- (a) such Executive Officer shall be an Ex-officio Trustee :
- (b) the trustees referred to in clauses (b) and (c) of sub-section (1) shall cease to hold office as Trustees : and
- (c) the total number of Trustees of the Board shall be eight."

2. **New section 6A**—After section 6, the following section shall be deemed to be inserted, namely,—

"6A. Publication of Notification, Hearing of Objections and Declaration under the Howrah Improvement Act, 1956, to be substituted for those under Sections 4, 5-A and 6.—When acquisition is proposed to be made of land comprised within any improvement scheme framed by the Board and published under section 51 of the Howrah Improvement Act, 1956—

- (i) the publication of a notice of the improvement scheme under sub-section (2) of section 45 of the Howrah Improvement Act, 1956, shall be substituted for and have the same effect as publication of a notification in the Official Gazette and giving public notice of the substance of such notification in the locality under section 4 :
- (ii) proceedings under section 47 and sub-section (1) of section 49 of the Howrah Improvement Act, 1956, shall be substituted for and have the same effect as proceedings under section 5-A :
- (iii) the publication of a notification under section 51 of the Howrah Improvement Act, 1956, shall be substituted for and have the same effect as a declaration under Section 6."

3. **Amendment of Section 11.**—In section 11, before the words 'make an award under his hand', the words "after considering such evidence as may be adduced by the Board under sub-section (2) of section 50" shall be deemed to be inserted.

4. **Amendment of Section 15.**—In section 15, for the word and figures "and 24", the figures, word and letter "24 and 24A" shall be deemed to be substituted.

5. **Amendment of section 17.**—In sub-section (3) of section 17, after the figures "24" the words, figures and letter "or section 24-A" shall be deemed to be inserted.

(2) To the said section 17, the following sub-section shall be deemed to be added, namely,—

"(5) Sub-section (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Magistrate of the first class to be unhealthy.

(6) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

(7) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence

* Inserted by the Howrah Improvement (Amendment) Act XVII of 1969, published in Calcutta Gazette, Extraordinary dated the 11-8-69, after repealing the Howrah Improvement (Amendment) Ordinance IX of 1969.

of being suddenly dispossessed of such land, compensation shall be paid to such persons for such dispossession."

6. **New section 17-A.**—After section 17, the following section shall be deemed to be inserted, namely,—

"**17-A. Transfer of land to Board.**—In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board ; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

7. **Amendment of section 23.**—(1) Sub-section (2) of section 23 shall be deemed to be omitted.

(2) At the end of section 23, the following sub-section shall be deemed to be added, namely,—

"(3) For the purposes of clause first of sub-section (1) of this section,—

(a) when acquisition is proposed to be made by the Board of land comprised within any improvement scheme framed by the Board and published under section 51 of the Howrah Improvement Act, 1956, the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of publication of the notice under the sub-section (2) of section 45 of the said Act ; and in other cases, the market-value shall be deemed to be the market value according to the disposition of the land at the date of publication of the notification relating thereto under section 4 ;

(b) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

(c) if any person, without the permission of the Chairman required by sub-section (8) of section 63 of the Howrah Improvement Act, 1956, has erected, re-erected or added to any wall (exceeding ten feet in height), or building within the street alignment or building line of a projected public street or a projected public park, or having erected, re-erected or added to any wall or building as aforesaid with such permission fails to remove such wall or building or any specified portion thereof when so required by notice issued under sub-section (9) of the said section, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded ;

(d) if any person erects, re-erects or adds to any wall (exceeding 10 feet in height), or building within a projected sewage disposal site or having erected, re-erected or added to any wall or building as aforesaid fails to remove such wall or building or any specified portion thereof when so required by a notice issued by the Board, then any increase

in the market-value resulting from such erection, re-erection or addition shall be disregarded :

- (e) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the date with reference to which the market-value is to be determined, such increase shall be disregarded, unless it be proved that the improvement was made *bonafide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;
- (f) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary use ; and
- (g) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding ;"

8. Amendment of section 24.—For clause seventhly of section 24, the following shall be deemed to be substituted, namely,—

"seventhly, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

9. New section 24-A.—After section 24, the following section shall be deemed to be inserted namely,—

24-A. Further provisions for determining compensation.—In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions namely,—

- (1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;
- (2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting in into such condition or state ;

- (3) if, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, minus the cost of demolishing the building ;
- (4) if any tank in any area comprised within a scheme framed by the Board and published under section 51 of the Howrah Improvement Act, 1956, is, on account of accumulation of filth, rubbish or putrid matter or the percolation of foul water from the kitchen, courtyard, privy or urinal, or for any other cause, in an unhygienic condition or contains water which is discoloured or malodorous or unfit for use for domestic purposes, or is a source of nuisance or disease, then notwithstanding anything contained in any law for the time being in force, the Tribunal shall, in determining the amount of compensation, make such deduction from the market-value of the tank according to its present disposition as will, in their opinion, be a reasonable set-off against the cost to society in unhealthiness, disease and discomfort caused by the tank being kept in such an unhygienic or insanitary condition."

10. Amendment of section 27.—Sub-section (2) of section 27 shall be deemed to be omitted.

11. New sections 48A and 48B.—After section 48, the following sections shall be deemed to be inserted, namely,—

"48-A Compensation to be awarded when land not acquired within two years.—(1) If, within a period of two years from the date of the issue of the public notice under sub-section (1) of section 9, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section,

"48B. Sections 48 and 48A not to apply in certain cases.—No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 79 of the Howrah Improvement Act, 1956."

12. Amendment of section 49.—For sub-section (1) of section 49, the following sub-section shall be deemed to be substituted, namely :—

"(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building if the acquisition of the part will render

the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable :

Provided that if any question shall arise as to whether the part proposed to be acquired will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable, the Collector shall refer the determination of such question to the Court and shall not take possession of such part until after the question has been determined.

In deciding on such a reference the Court shall have regard only to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the remaining portion of the house, manufactory or building."

Notes

Howrah Improvement Act, XIV of 1956, secs 47 & 49—In *Jugal Chandra Pandit v. The Board of Trustees, Howrah*, (a), it was held that (1) the scheme of the Act does not provide for invitation of objections to modifications made as a result of the objections made under section 47(2) of the Act, (2) the framing of a re-housing scheme is not a condition precedent to the framing and execution of a general improvement scheme, (3) every application submitted under section 49(1) must be accompanied by a statement only if a re-housing scheme had been framed and not otherwise.

WEST BENGAL (4)

¹THE BENGAL MUNICIPAL ACT, XV of 1932

Sections 98-101.

Acquisition of Land.

98. (1) When any land, whether within or without the limits of a municipality is required—

(a) for the purposes of this Act, or

(b) for the recoupment of the cost or any portion of the cost of carrying out any such purpose,

the [State Government] may, at the request of the Commissioners at a meeting, proceed to acquire it under the provisions of the Land Acquisition Act, 1894.

(2) Before requesting the [State Government] to acquire land for the purpose referred to in clause (b) of section 1 the Commissioners shall

(a) *Jugal Chandra Pandit v. The Board of Trustees, Howrah*, 70 C. W. N. 275.

¹ Of the Bengal Municipal Act 1932, Sections 21, 23, 102, 125, 126, 132, 138, 150 and 151 are amended by West Bengal Ordinance No. VII of 1966, called the Bengal Municipal (Amendment) Ordinance 1966 published in Calcutta Gazette, *Extraordinary*, dated 23-7-66.

obtain previous sanction of the [State Government] and give due notice of their intention and an opportunity to any objector, who appears within such period as they may fix, to be heard in this connection.

(3) On payment by the Commissioners of the compensation awarded under the Land Acquisition Act, 1894, and of any other charges incurred in acquiring the land including costs if any, incurred by the [State Government] in proceeding subsequent to acquisition concerning enhancement of the award for the land, the land shall vest in the Commissioners.

(4) The Commissioners shall be bound to pay to the [State Government] the cost including all charges and costs referred to in sub-section (3), of any land acquired for the Commissioners on their application under the provisions of sub-section (1).

Abandonment of acquisition in consideration of special payment.

99. (1) In any case in which the Commissioners propose to acquire any land for the recoupment of the cost of carrying out any of the purposes of this Act, the owner of land or any person having an interest therein greater than a lease for years having seven years to run may make an application to the Commissioners requesting that the acquisition of the land be abandoned in consideration of the payment by such person of a fee to be fixed by the Commissioners in that behalf.

(2) The Commissioners shall admit every such application if it reaches them before the time fixed by the Collector under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land :

Provided that unless the application is made by all persons who have an interest in the land greater than a lease for years having seven years to run, the application shall not be deemed to be admitted unless the person applying undertakes to pay in one instalment the full fee payable under sub-section (3) and thereafter pays such fee.

Explanation.—A mortgagee shall not be deemed to be a person having an interest in the land greater than a lease for years having seven years to run.

(3) If the Commissioners decide to admit any such application they shall forthwith inform the Collector, and the Collector shall thereupon stay proceedings for the acquisition of the land for such period as the Commissioners may request and the Commissioners shall proceed to fix a fee in consideration of which the acquisition of the land may be abandoned.

(4) In fixing the fee to be paid in consideration of the abandonment of the acquisition of the land, the Commissioners shall, so far as to them appear to be practicable, fix a sum which in their opinion represents two-thirds of the increment in the value of the land which will in their opinion accrue to that land as a result of the improvements effected in the locality by the scheme for the purposes of which the acquisition has been sanctioned.

(5) Such fee shall be and remain a charge on the land, in respect of which it has been fixed, until the repayment thereof with interest in the

manner hereinafter provided and shall be payable by the applicant on or before a date to be fixed by the Commissioners in this behalf ; and such date shall not be less than four years from the publication of the notification under section 6 of the Land Acquisition Act, 1894, nor shall such date be a date before that on which the scheme is declared by the Commissioners to be completed in so far as it affects such land.

(6) Before the date so fixed, the person from whom the Commissioners have arranged to accept the said fee, may if the Commissioners are satisfied that the security offered by him is sufficient, execute an agreement with the Commissioners either—

(i) to leave the said fee outstanding as a charge on his interest in the land subject to the payment in perpetuity of interest at a rate not exceeding seven *per cent per annum*, the said interest to run from the date fixed under sub-section (5), or

(ii) to pay the said fee by such number of equal yearly or half-yearly instalments of principal or of principal and interest, as may be approved by the Commissioners, interest in both cases being calculated at a rate not exceeding seven *per cent. per annum* on the amount outstanding,

(7) When the said fee has been paid on or before the date fixed under sub-section (5), or when an agreement has been executed in pursuance of sub-section (6) in respect of any land, the proceedings for the acquisition of land shall be deemed to be abandoned.

(8) If the said fee be not paid on or before the date fixed under sub-section (5), the Collector shall then proceed to acquire the land.

(9) If any sum payable under an agreement executed in pursuance of sub-section (6) be not paid on the date on which it is due, or on such later date as the Commissioners may in their discretion fix in this behalf, so much of the fee fixed by the Commissioners under sub-section (3) as is still unpaid, shall be payable on that date in addition to the said sum.

(10) At any time after an agreement has been executed in pursuance of clause (i) of sub-section (6) any person may pay off the balance outstanding of the charge created thereby with interest due, if any, at a rate not exceeding seven *per cent per annum*, up to the date of such payment.

Recovery of money payable in pursuance of section 99

100. When an agreement has been executed by any person in pursuance of sub-section (6) of section 99 in respect of any land, and any money payable in pursuance of that section is not duly paid, the same shall be recoverable by the Commissioners (together with interest up to the date of realization, at a rate not exceeding seven *per cent per annum*), under the provisions of this Act ;

and, if not so recovered, the Commissioners may, after giving public notice of their intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the

expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

**Agreement or payment under section 99 not to bar
acquisition under a fresh declaration.**

101. If any land in respect of which an agreement has been executed, or a payment has been accepted in pursuance of sub-section (6) of section 99 be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

W. Bengal (5)

THE CALCUTTA MUNICIPAL ACT, XXXIII OF 1951

Sections 366—369, 517. 523—525.

**Power to Corporation to acquire land and buildings for
improvement of public streets, squares and gardens.**

366. (1) The Corporation may acquire—

(a) any land required for the purpose of opening, widening, extending or otherwise improving any public street, square or garden, or of making any new public street, square or garden, and

(b) the building (if any) standing upon such land.

(2) The Corporation, with the sanction of the State Government, and after giving due notice of their intention and an opportunity to any objector, who appears within such period as they may fix, to be heard in this connection may acquire, in addition to any land and buildings acquired under sub-section (1), any land outside any proposed street alignment, with the buildings (if any) standing thereupon, which the Corporation may, for any of the purposes mentioned in sub-section (1), including the recoupment of the cost or any portion of the cost incurred for any such purposes, consider it expedient to acquire.

**Abandonment of acquisition in consideration of
special payment.**

367. (1) In any case in which the State Government have sanctioned the acquisition of land or building under section 366, sub-section (2), the owner of the land, or building or any person having an interest therein greater than a lease for years having seven years to run, may make an application to the Corporation, requesting that the acquisition of the land be abandoned in consideration of the payment by such person of a fee to be fixed by the Corporation in that behalf,

(2) The Corporation shall admit every such application if it reaches them before the time fixed by the Collector under section 9 of Land Acquisition Act, 1894, for making claims in reference to the land or building :

Provided that unless the application is made by all the persons who have an interest in the land or building greater than a lease for years having seven years to run, the application shall not be admitted unless the person undertakes to pay in one instalment the full fee payable under sub-section (3) and thereafter pays such fee.

Explanation.—A mortgagee shall not be deemed to be a person having an interest in the land or building greater than a lease for years having seven years to run.

(3) If the Corporation decide to admit any such application, they shall forthwith inform the Collector, and the Collector shall thereupon stay proceedings for the acquisition of the land, or building for a period not exceeding twelve months and the Corporation shall proceed to fix a fee in consideration of which the acquisition of the land or building may be abandoned.

(4) In fixing the fee to be paid in consideration of the abandonment of the acquisition of the land, or building the Corporation shall, so far as to it may appear to be practicable, fix a sum which in their opinion represents two-thirds of the increment in the value of the land, or building which will in their opinion accrue to that land, or building as a result of the improvements effected in the locality by the scheme for purposes of which the acquisition has been sanctioned.

(5) Such fee shall be and remain a charge on the land, or building in respect of which it has been fixed, until the repayment thereof with interest in the manner hereinafter provided and shall be payable by the applicant on or before a date to be fixed by the Corporation in this behalf : and such date shall not be less than four years from the publication of the notification under section 6 of the Land Acquisition Act, 1894, nor shall, such date be a date before that on which the scheme is declared by the Corporation to be completed in so far as it affects such land or building.

(6) Before the date so fixed, the person from whom the Corporation have arranged to accept the said fee, may, if the Corporation is satisfied that the security offered by him is sufficient, execute an agreement with the Corporation either—

(i) to leave the said fee outstanding as a charge on his interest in the land, or building subject to the payment in perpetuity of interest at a rate not exceeding seven *per cent per annum*, the said interest to run from the date fixed under sub-section (5), or,

(ii) to pay the said fee by such number of equal yearly or half-yearly instalments of principal or of principal and interest, as may be approved by the Corporation, interest in both cases being calculated at a rate not exceeding seven *per cent per annum* on the amount outstanding.

(7) When the said fee has been paid on or before the date fixed under sub-section (5), or when an agreement has been executed in pursuance of

sub-section (6) in respect of any land, or building the proceedings for the acquisition of the land or building shall be deemed to be abandoned.

(8) If the said fee be not paid or an agreement in respect of the land or building be not executed in pursuance of sub-section (6) on or before the date fixed under sub-section (5), the Collector shall then proceed to acquire the land or building.

(9) If any sum payable under an agreement executed in pursuance of sub-section (6) be not paid on the date on which it is due, or on such later date as the Corporation may in its discretion fix in this behalf, so much of the fee fixed by Corporation under sub-section (3) as is still unpaid, shall be payable on that date, in addition to the said sum.

(10) At any time after an agreement has been executed in pursuance of clause (i) of sub-section (6) any person may pay off the balance outstanding of the charge created thereby, with interest due, if any, at a rate not exceeding seven *per cent. per annum*, up to the date of such payment.

Recovery of money payable in pursuance of section 367.

368. When an agreement has been executed by any person in pursuance of section 367, sub-section (6), in respect of any land, or building and any money payable in pursuance of that section is not duly paid, the same shall be recoverable by the Corporation (together with interest up to the date of realisation, at a rate not exceeding seven *per cent per annum*), under the provisions of this Act ;

and, if not so recovered, the Corporation may, after giving public notice of their intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land or building by public auction, and may deduct the said money and expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

Agreement or payment under section 367 not to bar acquisition under a fresh declaration.

369. If any land or building in respect of which an agreement has been executed, or a payment has been accepted, in pursuance of section 367, sub-section (7), be subsequently required for any of the purposes of of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land or building in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

Power to Corporation to acquire land and buildings for improvement.

517. The Corporation may acquire any land or building, whether situated in Calcutta or not,—

(i) for the purpose of opening out any congested or unhealthy area or of otherwise improving any portion of Calcutta ; or.

- (ii) for the purpose of erecting sanitary dwellings for the working and poorer classes ; or
- (iii) for the purpose of executing any other scheme for providing any amenity for persons residing in Calcutta.

Exemption of places of public worship from acquisition.

523. Nothing in this Act, shall authorize the Corporation to acquire for the purposes of this chapter or of any other section of the Act any building which is intended solely for and is used solely as a place of public worship.

Application of Land Acquisition Act, 1894, with amendment.

524. Any land or building which the Corporation is authorized by this Act to acquire under the provisions of the Land Acquisition Act, 1894, and for that purpose the said Act shall be subject to the amendment that the market-value of any land or building to be acquired shall be deemed, for the purpose of clause *first* of sub-section (1) of Section 23 of the Land Acquisition Act, 1894, to be the market-value according to the disposition of such land or building at the date of publication of the declaration relating thereto under section 6 of the Land Acquisition Act, 1894 :

Provided as follows :—

(i) if, within a period of two years from the date of the publication of such declaration in respect of any land or building, the Collector has not made an award under section 11 of the said Land Acquisition Act 1894, with respect to such land or building, the owner of the land or building shall be entitled to receive compensation for the damage suffered by him in consequence of the delay ;

(ii) if the market-value is especially high in consequence of the property being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land or building if put to ordinary use ;

(iii) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within one year before the aforesaid declaration was published, such increase shall be disregarded, unless it be proved that the improvement was *bonafide* and not in contemplation of proceedings for the acquisition of the land or building being taken under the said Land Acquisition Act, 1894.

Vesting in Corporation of land and buildings acquired under the Land Acquisition Act, 1894.

525. On payment by the Corporation of the compensation awarded under the said Land Acquisition Act, 1894, in respect of any land or buildings of any other charges incurred in acquiring the said land or building, the same shall vest in the Corporation.

West Bengal (6)

**THE CALCUTTA IMPROVEMENT (APPEALS)
ACT (XVIII OF 1911)**

An Act to modify certain provisions of the Calcutta Improvement Act, 1911.

WHEREAS it is expedient to modify the provisions of the Calcutta Improvement Act, 1911, so as to provide in certain cases for an appeal to the High Court from the awards of the Tribunal constituted under that Act ;

It is hereby enacted as follows :

1. Short title.—This Act may be called the Calcutta Improvement (Appeals) Act, 1911.

2. Definitions :—In this Act—

(1) “Court” means the High Court of Judicature at Fort William in Bengal ; and

(2) “Tribunal” has the same meaning as in the Calcutta Improvement Act, 1911.

3. Appeal from awards of the Tribunal.—(1) Notwithstanding anything contained in the Calcutta Improvement Act, 1911, an appeal shall lie to the Court in any of the following cases, namely :

(a) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of Sec. 77 of the said Act,

(b) where the decision is that of the Tribunal, and

(i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(ii) the Court grants special leave to appeal :

Provided that the Court shall not grant such special leave unless the President has refused to grant a certificate under sub-section (i) and the amount in dispute is five thousand rupees or upwards.

(2) An appeal under clause (b) of sub-section (1) shall only lie on one or more of the following grounds, namely :

(i) the decision being contrary to law or to some usage having the force of law ;

(ii) the decision having failed to determine some material issue of law or usage having the force of law ;

(iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

4. Procedure in such appeals.—Subject to the provisions of sec. 3, the provisions of the Code of the Civil Procedure, 1908, with respect to appeals from original decrees shall so far as may be, apply to appeals under this Act.

5. Execution of orders of Court.—The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the Court on appeal under this Act, as if it were a decree made by himself.

6. Period of limitation for such appeals.—An appeal under sec. 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of item No. 156 of the First Schedule to the Indian Limitation Act 1908. (Art 116 of Act of 1963.)

W. Bengal (7)

The West Bengal Land (Requisition and Acquisition) Act, 1948.

(II of 1948). (11. 3. 48)

¹(As amended up to 1967).

An Act to provide for the requisition and speedy acquisition of land for certain purposes.

Whereas it is expedient to provide for the requisition and speedy acquisition of land for the purposes of maintaining supplies and services essential to the life of the community, providing proper facilities for transport, communication, irrigation or drainage and for the creation of better living conditions in urban or rural areas by the construction or re-construction of dwelling places for people residing in such areas.

It is hereby enacted as follows—

1. Short title, extent, commencement and duration.—(1) This Act may be called the West Bengal Land (Requisition and Acquisition) Act, 1948.

(2) It extends to the whole of West Bengal.

(3) It shall come into force at once.

(4) It shall remain in force upto the ²[31st day of March, 1972.]

2. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

2a. “Calcutta” means Calcutta as defined in the Calcutta Municipal Act, 1951 ;

(a) “Collector” means, in Calcutta, the first Land Acquisition Collector, Calcutta, elsewhere, the Collector of a district and includes a Deputy Commissioner and any officer specially appointed by the State Government to perform the functions of a Collector under this Act ;

(b) “Court” means a principal Civil Court of original jurisdiction, and includes the Court of any Additional Judge, Subordinate Judge or Munsif whom the State Government may appoint, by name or by virtue of his office, to perform, concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits and, in case of a Munsif, upto the limits of the pecuniary jurisdiction with which he is vested under section 19 of Bengal, Agra and Assam Civil Courts Act, 1887 ;

¹ Act is amended by W. B. Acts 7 of 1951, 8 of 1954, 15 of 1956, 12 of 1957, 29 of 1962, 7 of 1964 & 3 of 1967.

² Amended by West Bengal Act III of 1967, Sn. 2. See Calcutta Gazette Extraordinary dated 31-3-67.

- (b1) "land" has the same meaning as in the Land Acquisition Act, 1894 ;
- (b2) the expression 'person interested' includes all persons claiming an interest in compensation to be paid on account of the requisition of land under this Act ; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land ; and
- (c) "prescribed" means prescribed by rules made under this Act.

¹[3. **Power to requisition.**—(1) If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by State Government by a notification in this behalf, by the construction or reconstruction of dwelling places for people residing in such areas, the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning :

Provided that no land used for the purpose of religious worship or used by an educational charitable or institution shall be requisitioned under this section.

(1A) A Collector of a district, ²[an Additional District Magistrate or the First Land Acquisition Collector Calcutta], when authorised by the State Government in this behalf, may exercise within his jurisdiction the powers conferred by sub-section (1).]

(2) An order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of an occupier not being the owner of the land, also on such occupier.

(3) If such person fails to comply with an order made under sub-section (1), the Collector or any person authorised by him in writing in this behalf shall execute the order in such manner as he considers expedient and may,—

- (a) if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or
- (b) if he is not a Magistrate, apply to a Magistrate or, in Calcutta as defined in Clause (II) of section 5 of the Calcutta Municipal Act, 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of such land to him.

Notes

Absence of provision in the Act for a prior notice of acquisition or requisition under W. B. Act II of 1948 is not a violation of natural justice :—

¹ Amended by West Bengal Act 29 of 1962.

² Amended by West Bengal Act 32 of 1963.

In *Mihir Kumar Sarkar & Ors. v. State of West Bengal (a)*, the facts were, some lands including fisheries in the district of 24 Parganas, were requisitioned on 5.11.69 'for creating better living conditions in rural and urban areas by construction or re-construction of dwelling houses for I.W. Dept. of West Bengal'. The same area was covered by declaration made by the Government under the L. A. Act dated 21.5.68 and which was challenged in a writ proceeding and on 15.7.69 the High Court finding that the object set out in the declaration was not the actual object for which acquisition was made, set aside the acquisition but specifically not debarring any fresh proceeding under the L. A. Act. It may be noted that there is no provision in the said Act providing for prior notices of either requisition or acquisition, allowing an opportunity to raise objections and make any representation against such order of requisition etc. The provisions of notices that are there, are only for submitting claims.

It was held, that (1) the previous order did not bar proceedings under other Acts, if available, and if different powers are provided by different statutes, it is open to the authority empowered thereby to take recourse to or even change over from one to the other, so long as it is not a fraud on the statute or made with any collateral or *malafide* motives, (2) there is no bar to a representation being made under the said Act after the order is served under sec. 3 (2) of the Act, so the absence of provision of prior notice of requisition or acquisition does not vitiate the proceedings besides there is provision for public notices under sections 4 & 5. (b). (3) Construction of dwelling houses for Government staffs is a public purpose. (4) Change in the character of property is not debarred. (5) the preamble read with the sections are not contradictory nor the preamble can override express language of the sections. (6) The rules of natural justice of giving prior notice of requisition or acquisition, can be excluded by a statute expressly or by implication. (7) The inequality in procedure can be challenged under Art. 14 of the Constitution and the said Act is not *ultra vires* on that ground.

It may be noted that the above finding on the question of natural justice of giving prior notice, seems to go against some well known decisions (c).

Collector-'a tribunal' :—It has been held in *Kalidasi, v. L. A. Collector Suri (d)*, that the Collector is a tribunal within meaning of Art. 227 of the Constitution and that there being no prescribed manner requiring service of notice by Collector as required under sec. 7 (2) (aa) (ii) of the Act the First part of proviso (b) of Sec. 18 (2) of the Act would not be operative, as

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- (a) *Mihir Kumar Sarkar v. State of West Bengal*, 75 C. W. N. 831 (D. B.).
 (b) *S. N. Nandy v. State of West Bengal*, A. I. R. 1971, S. C. 961 and *Northern India Caterers v. State of Punjab*, A. I. R. 1967, S. C. 1581; *Nader Shah v. State of Assam*, A. I. R. 1960, Ass. 18.
 (c) *Durayappa v. Fernando* (1967) 2 A. E. R. 152; *Schmidt v. Secy. of State*, (1969) 2 W. L. R. 962; *State of M. P. v. Champalal*, 1962 S. C. A. 59 and A. I. R. 1965 S. C. 124; *Jagannath v. State of Orissa*, (1954), S. C. R. 1046.
 (d) *Kalidasi v. L. A. Collector, Suri*, 66 C. W. N. 446.

a result the application for reference under the statute can be filed within the other longer period prescribed in the last part of sec. 18, i. e., six months from the date of Collector's award.

4. Acquisition of land.—¹(1) Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.

¹(1a) The State Government may acquire any land requisitioned under section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of section 3.

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all incumbrances and the period of requisition of such land shall end.

5. Notice to persons interested.—(1) After the publication of a notice under sub-section (1a) of section 4, the Collector shall cause public notice to be given at convenient places on or near the land acquired, stating that the State Government has acquired the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such public notice shall state the particulars of the land so acquired, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice in the manner prescribed on the occupier (if any) of such land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by registered post in a letter addressed to him at his last known residence, address or place of business.

5A. Exclusion of mines, etc.—In making an order under sub-section (1) of section 3 or in publishing a notice under sub-section (1a) of section 4, the State Government may mention in the order or the notice that mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land are not needed and thereupon reference to the land shall be construed as excluding such mines or minerals.

6. Release from requisition.—(1) Where any land requisitioned under section 3 is not acquired and is to be released from requisition, the State Government may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to the possession of such land.

¹ Amended by W. B. Act VIII of 1954.

(2) The delivery of possession of such land to the person specified in the order made under sub-section (1) shall be a full discharge of any liability of the State Government for any claim for compensation or other claim in respect of such land for any period after the date of delivery but shall not prejudice any right in respect of such land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person specified in the order made under sub-section (1) cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the State Government shall publish in the Official Gazette a notice declaring that such land is released from requisition and shall cause a copy thereof to be affixed on some conspicuous part of such land.

(4) When a notice referred to in sub-section (3) is published in the Official Gazette, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person specified in the order made under sub-section (1); and the State Government shall not be liable for any compensation or other claims in respect of such land for any period after the said date.

7. Compensation.—(1) Whenever any land is acquired under section 4 there shall be paid to every person interested compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principles set out in sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as they may be applicable :

Provided that the market-value referred to in clause first of sub-section (1) of section 23 of the said Act shall, in respect of any land acquired under this Act, be deemed to be the market value of such land on the date of publication of the notice referred to in sub-section (1a) of section 4 ;

¹ Provided further that in respect of any land in Calcutta which, immediately before the 1st day of January, 1964, constituted a bustee as defined in clause (10), of section 5 of the Calcutta Municipal Act, 1951, the amount of compensation to be paid on account of acquisition to the persons interested shall be determined in the manner and in accordance with the principles set out in sub-section (1) of section 7 of the Calcutta Slum Clearance and Rehabilitation of Slum-dwellers Act, 1958, so far as they may be applicable.

¹ The second proviso originally ran as follows :—“Provided further that if such market value exceeds by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of the publication of the notice referred to in sub-section (1) of Sec. 4, the amount of such excess shall not be taken into consideration”, was omitted by West Bengal Land (Requisition and Acquisition) (Amendment) Act, (VIII) of 1954, S. 8(3) because of the fact that this proviso was held void and *ultra vires* in *State of West Bengal v. Bonbihari Mondal*, I. L. R. (1960) 1 Cal. 824 following *State of W. B. v. Murari Mohan* (F. As. 18 and 19 of 1953) unreported. Relied on *State of W. B. v. Bella Banerjee* (1954) S. C. A. 41. (1956) S. C. A. 17 & A.I.R. 1955, S. C. 781, distinguished and (1951) 11, S. C. R. 228 and (1956) S. C. 20 referred to.

²(2) (a). When the compensation has been determined under sub-section (1) the Collector shall make an award in accordance with the principles set out in section 11 of the Land Acquisition Act, 1894, and no amount referred to in sub-section (2) of Section 23 of that Act, shall be included in the award :

! Provided that interest at the rate of six per centum per annum on the amount of compensation under the award from the date of the publication of the notice under sub-section (1a) of section 4 until payment shall be included in the amount payable under the award.

(aa)(i). Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested in the land, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested ;

(ii) the Collector shall give in the prescribed manner immediate notice of his award to such of the persons interested in the land as are not present personally or by their representatives when the award is made.

(b) Upon an award being made under clause (a), the Collector shall proceed to make payment in accordance with the provisions of section 31 to 33 of the Land Acquisition Act, 1894, so far as they may be applicable.

(3) Where any land is requisitioned under section 3, there shall be paid to every person interested, compensation, in respect of—

(a) the requisition of such land ; and

(b) any damage done during the period of requisition to such land other than what may have been sustained by natural causes.

(4) The principles to be followed in determining compensation under sub-section (3) shall be as follows, namely :—

(i) where the Collector and the person interested agree as to the compensation, the Collector shall make an award ordering payment of the agreed compensation ;

(ii) where the person interested cannot be traced or does not appear before the Collector when called upon to be present for the purpose of the determination of the compensation, such amount shall be determined as compensation as appears reasonable to the Collector having regard to the facts and circumstances of the case and the Collector shall make an award ordering payment of the compensation so determined ;

(iii) where there is any disagreement between the Collector and the person interested, the compensation payable shall be the amount determined by the Court on reference made by the Collector under clause (b) of sub-section (1) of section 8.

² S. 7(2)(a) deprives the owner of statutory allowance and interest as allowed under the Central Act and so being discriminatory, is void under Art. 14 of the Constitution. So statutory allowance and interest at the rate of 6 P. C. is payable. Midnapore Zamindary's case is overruled by Supreme Court in *Dy. Com., Kamrup v. Durganath Sarma*, A. I. R. 1968, S. C. 394 and *Balammal & Ors. v. State of Madras*, A. I. R. 1968, S. C. 1425. *Sri Iswar Lakshmi Jonardan Thakur & Ors. v. State of West Bengal & Ors.*, 75 C. W. N. 184 (D.B.).

8. Reference to Court.—(1) The Collector shall in every case—

(a) where any person interested being aggrieved by an award made under sub-section (2) of section 7 or clause (ii) of sub-section (4) of that section makes an application requiring the matter to be referred to the Court ; or

(b) where there is any disagreement with regard to the compensation payable under sub-section (3) of section 7 between the Collector and any person interested in compensation, refer the matter to the decision of the Court.

(2) The provisions of sub-section (2) of section 18 and of sections 19 to 22 and of sections 25 to 28 of the Land Acquisition Act, 1894, and the principles set out in sub-section (1) and in clause (a) of sub-section (2) of section 7 of this Act, shall, so far as they may be applicable, apply in respect of any reference made to the Court under sub-section (1).

Explanation.—The notice given under sub-clause (ii) of clause (aa) of sub-section (2) of section 7 shall be deemed to be the notice under sub-section (2) of section 12 of the Land Acquisition Act, 1894, for the purposes of the proviso to section 18 thereof.

8A. Appeal.—The provisions of the Code of Civil Procedure, 1908, relating to appeals shall apply to an award made by the Court on a reference under section 8 as if such award were an original decree passed by the court in exercise of its civil jurisdiction.

9. Power to enter upon land etc.—The State Government may, with a view to requisitioning any land or for the purpose of determination by the Collector of the amount of compensation payable under this Act, by order,—

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the land as may be specified ;

(b) direct that the owner or occupiers of the land shall not dispose of it or alter it till the expiry of such period as may be specified in the order ;

(c) authorise any person to perform in respect of any land or any of the functions referred to in sub-section (2) of section 4 of the Land Acquisition Act, 1894.

10. Penalty.—If any person contravenes any order made under this Act he shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

11. Saving.—Save as otherwise expressly provided in this Act, no decision or order made in exercise of any power conferred by or under this Act shall be called in question in any court.

12. Protection of action taken under this Act.—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

(2) Save as otherwise expressly provided in this Act, no suit or other legal proceeding shall lie against the State Government for any damage

caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

12A. No stamp duty to be paid for award or agreement and no fees to be paid for copies thereof.—No award or agreement made under this Act shall be chargeable with stamp duty and no person claiming under any such award or agreement shall be liable to pay any fee for a copy thereof.

13. Power to make rules.—(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :—

(a) the manner of service of orders on the owner or occupier of land referred to in sub-section (2) of section 3 ; and

(b) the manner of service of notice on the persons referred to in sub-section (3) of section 5,

West Bengal (7A)

THE WEST BENGAL LAND (REQUISITION AND ACQUISITION) AMENDMENT ACT XVI OF 1970

The following Act of the West Bengal Legislature, having been assented to by the President, was published in the Calcutta Gazette, Ext, Part III, No. 159, dated March 3, 1970, Phalgun 12, 1891 (Saka).

An Act to amend the West Bengal Land (Requisition and Acquisition) Act, 1948.

Whereas it is expedient to amend the West Bengal Land (Requisition and Acquisition) Act, 1948, (West Bengal Act, II of 1948) for the purposes and in the manner hereinafter appearing ;

It is hereby enacted in the twenty first year of the Republic of India by the Legislature of West Bengal, as follows :—

1. Short title.—This Act may be called the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1970.

2. Amendment of the preamble of West Bengal Act II of 1948.—In the preamble of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the said Act), the words “for people residing” shall be omitted.

3. Amendment of section 3.—In sub-section (1) of section 3 of the said Act, the words “for people residing” shall be omitted.

4. Repeal and savings.—(1) The West Bengal Land (Requisition and Acquisition) (Amendment) Ordinance 1969, (West Bengal Ord, XIII of 1969) is hereby repealed.

(2) Anything done or any action taken under the said Act as amended by the West Bengal Land (Requisition and Acquisition) Ordinance, 1969, shall be deemed to have been validly done or taken under the said Act as amended by this Act as if this Act had commenced on the 16th day of October, 1969.

West Bengal (7B)

**THE WEST BENGAL LAND (REQUISITION AND ACQUISITION)
(AMENDMENT) ORDINANCE NO. IV. OF 1972.**

(Published in the Calcutta Gazette Ext. dated 23rd March 1972)

*Instruction of the President under the proviso to Cl. (1) of Art. 213
of the Constitution of India has been obtained.*

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2. Amendment of section 1 of West Bengal Act II of 1948 :—In sub-section (4) of section 1 of the West Bengal Land (Requisition and Acquisition) Act, 1948, for the words and figures “the 31st day of March, 1972” the words and figures “the 31st day of March, 1977” shall be substituted.

West Bengal (7C)

**THE WEST BENGAL LAND (REQUISITION AND
ACQUISITION) (AMENDMENT) ACT 1972.**

West Bengal Act VII of 1972

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 4th May, 1972,]

An Act to amend the West Bengal Land (Requisition and Acquisition) Act, 1948.

WHEREAS it is expedient to amend the West Bengal Land (Requisition and Acquisition) Act, 1948, for the purpose and in the manner hereinafter appearing ;

It is hereby enacted in the Twenty-third Year of the Republic of India, by the Legislature of West Bengal, as follows :—

1. **Short title.**—This Act may be called the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1972.

2. **Amendment of section 1 of West Bengal Act II of 1948.**—In sub-section (4) of section 1 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the said Act), for the words and figures “the 31st day of March, 1972”, the words and figures “the 31st day of March, 1977” shall be substituted.

3. **Repeal and Savings.**—(1) The West Bengal Land (Requisition and Acquisition) (Amendment) Ordinance, 1972, is hereby repealed.

(2) Anything done or any action taken under the said Act, as amended by the West Bengal Land (Requisition and Acquisition) (Amendment) Ordinance, 1972, shall be deemed to have been validly

done or taken under the said Act as amended by this Act as if this Act had commenced on the 23rd day of March, 1972.

West Bengal (8).

WEST BENGAL ACT IV OF 1952

THE WASTE LANDS (REQUISITIONING AND UTILIZATION) ACT, 1952.¹

[12th May, 1952]

An Act to provide for the requisitioning and utilization of waste lands.

WHEREAS it is expedient to provide for the requisitioning of waste lands for certain public purposes with a view to better utilization thereof and also to provide for certain other matters connected therewith ;

It is hereby enacted as follows :—

1. **Short title, extent and commencement** (1) This Act may be called the Waste Lands (Requisitioning and Utilization) Act, 1952.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date¹ as the State Government may, by notification in the *Official Gazette*, appoint.

2. **Definitions** :—In this Act, unless there is anything repugnant in the subject or context,—

(1) “the Collector” used in relation to any waste land means the Collector of the district within which the waste land is situated and includes any officer, not below the rank of a Subdivisional Magistrate, appointed by the State Government to carry out all or any of the functions of a Collector under this Act ;

(2) “person interested” used in relation to any waste land means any person having any interest in the waste land measurable in money, which is prejudicially affected by the requisitioning or the utilization of the waste land under this Act ;

(3) “prescribed” means prescribed by rules made under this Act ;

(4) “public purpose” means a purpose having, or being connected with, any of the following objects, namely :—

(a) the production of food crops (including fruits and vegetables), fish, poultry, milk and milkproducts ;

(b) excavating, enlarging, deepening or damming any *beel*, *baor*, tank or other water area or constructing, strengthening, enlarging or improving any *hund* or embankment for purposes of irrigation or drainage or fish production ;

(c) the composting of refuse or the preparation of any form of manure ;

(d) the establishment of seed farms or plant or fish nurseries ; or

¹ The Act came into force on the 1st June, 1952.

- (e) any other object which the State Government may, by notification in the *Official Gazette*, declare essential for the improvement of agriculture or pisciculture ;
- (5) "waste land" means any land classified in the record-of-rights published under the Bengal Tenancy Act, 1885, as *nutan patit*, *puratan patit*, *layek patit*, *gar layek patit*, or *layek jungal* and includes any land or water area which in the opinion of the State Government, has not been adequately used for the production of crops or fish for a continuous period exceeding two years but does not include land, forming part of, any homestead, farmhouse, burning or burial ground or any place of worship.

Explanation.—References to any waste land shall be construed to mean that land even if it ceases to be waste land as a result of requisitioning and utilization under this Act.

3. **Notification.**—(1) The Collector, either of his own motion or on application made to him by any person (including a public servant, company, local authority or co-operative or registered society), may, if he is of opinion that any waste land is needed or is likely to be needed for public purpose, by notification in the *Official Gazette*, require all persons interested in the waste land to show cause within such time as may be specified in the notification why the waste land should not be requisitioned under this Act.

(2) Public notice of the substance of any notification as aforesaid shall be given locally by beat of drum and in such other manner as may be prescribed.

4. **Requisition.**—(1) Any person interested in any waste land in respect of which notification under sub-section (1) of section 3 has been issued may within the time specified in such notification petition to the Collector showing cause why the waste land should not be requisitioned.

(2) The Collector shall on such date or dates as may be fixed by him in this behalf consider all such petitions and shall give such of the petitioners as appear before him in person or by pleader, an opportunity of being heard.

(3) If after considering all such petitions and after making such enquiry, if any, as he thinks fit, the Collector is satisfied that the waste land should not be requisitioned he shall cancel the notification under sub-section (1) of section 3.

(4) If after considering all such petitions and after making such enquiry, if any as he thinks fit, the Collector is satisfied that the waste land should be requisitioned he shall make an order for the requisition of the waste land specifying in the order the time within which the possession of the waste land shall be delivered to him.

5. **Delivery of possession.**—Upon an order for the requisition of any waste land being made under sub-section (4) of section 4, the person in possession of the waste land shall deliver possession thereof to the Collector within the time specified in the order and in default of his doing so, the Collector may take possession thereof by force, if necessary.

6. Utilization of waste land.—(1) As soon as may be after the Collector is in possession of any waste land under the provisions of section 5, he shall make over possession thereof to the State Government or to any person (including a public servant, company, local authority or co-operative or registered society) as he thinks fit, for being utilized for public purpose on such terms and conditions and subject to the payment of such sums periodically or otherwise, as he may determine.

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(3) Where possession has been made over to the State Government or to any person under sub-section (1), the State Government or such person shall be entitled to do in, on, or with respect to the waste land all manner of things necessary for utilizing the waste land to the fullest extent for public purpose and also anything ancillary or incidental to such purpose.

(4) The sums payable under sub-section (1) by the State Government or by a person to whom possession has been made over under that sub-section shall not be less than the amount payable by Collector as compensation under section 8.

(5) Any sum payable under sub-section (1) by a person to whom possession has been made over under that sub-section shall be recoverable as a public demand.

(6) Nothing in this Act shall be deemed to confer on any person to whom possession has been made over under sub-section (1), the status of a tenant or to confer on him any transferable right.

7. Eviction.—(1) If at any time the Collector is satisfied that any person to whom possession has been made over under sub-section (1) of section 6—

- (a) has failed to utilize the waste land for public purpose, or
- (b) has failed to comply with the terms and conditions determined by the Collector under sub-section (1) of section 6, or
- (c) has failed to pay any sum payable under sub-section (1) of section 6, when it has become due, the Collector may, without prejudice to any other remedy he may have, serve a notice upon such person requiring him to give back possession of the waste land to him within such date as may be specified in the notice.

(2) Such person shall comply with such notice and in default of his doing so, the Collector shall take possession of the waste land by force, if necessary.

(3) The Collector may, after he has obtained possession of the waste land under sub-section (2), deal with the waste land as if he is in possession thereof under the provisions of section 5.

8. Compensation.—(1) Where the possession of any waste land is delivered or taken under section 5, every person interested in such land shall be entitled to compensation for so long as his interest subsists but in no case beyond the date of the release of such land from requisition under section 10, the amount of such compensation being determined in the manner and in accordance with the principles hereinafter set out,

(2) As soon as may be after the date of the delivery of possession or the taking of possession of any waste land under section 5, the Collector shall determine—

(a) in respect of any waste land which on the said date was in the occupation of a tenant or a lessee—

(i) the annual rent and cesses, if any, payable by the tenant or the lessee in respect of such land, and

(ii) the average net annual income derived from such land by the tenant or lessee during the three years immediately preceding the said date, or if no income was derived from such land by the tenant or lessee during the said three years, the sum equivalent to three *per cent.* of the market-value of the interest of the tenant or of the lessee in such land on the date of the notification under section 3 ;

(b) in respect of any waste land which on the said date was in the occupation of a proprietor, the average annual income derived from such land by such proprietor during the three years immediately preceding the said date, or if no income was derived by such proprietor during the said three years, the sum equivalent to three *per cent.* of the market-value of such land on the date of the notification under section 3 ;

(c) in respect of any waste land in which any person other than a tenant or a lessee or a proprietor in occupation is interested, the average net annual compensation derived from such land by the person in occupation thereof during the three years immediately preceding the said date, or if no income was derived by such person during the said three years, the sum equivalent to three *per cent.* of the market-value of such land on the date of the notification under section 3.

(3) The Collector shall by order direct that there shall be payable by the State Government as compensation on each anniversary of the delivery of possession or the taking of possession under section 5, and for the duration referred to in sub-section (1),—

(a) in respect of such waste land as is referred to in clause (a) of sub-section (2),—the amount determined under sub-clause (i) of that clause to the landlord or the lessor, and the amount determined under sub-clause (ii) of that clause to the tenant or the lessee ;

(b) in respect of such waste land as is referred to in clause (b) of sub-section (2),—the amount determined under that clause to the proprietor ; and

(c) in respect of such waste land as referred to in clause (c) of sub-section (2),—to every person interested in such land such sum as may be apportioned to him by the Collector, out of the amount referred to in that clause, having regard to the nature and extent of his interest.

Explanation.—For the purpose of this section the expressions “landlord”, “proprietor” and “tenant” have the same meanings as in

the Bengal Tenancy Act, 1885, and the expressions "lessor" and "lessee" have the same meanings as in the Transfer of Property Act, 1882.

9. Payment of compensation to be a full discharge.—The payment of any compensation in accordance with an order under section 8 shall be a full discharge of any liability of the Collector and of the State Government to pay compensation to any person who may have a rightful claim thereto, but shall not prejudice any right in respect thereof which may be enforced by any person by due process of law against the person to whom the compensation is so paid.

10. Release from requisition.—(1) When the Collector is of opinion that any waste land in respect of which an order for requisition has been made under sub-section (4) of section 4, is no longer required for public purpose, the Collector may, after making such enquiry, if any as he thinks fit, specify by order in writing the person who appears to him to be entitled to the possession of such waste land and may proceed to release the waste land from requisition :

Provided that—

- (a) no waste land shall be kept under requisition for a period extending beyond twenty years from the date of the possession of the waste land by the Collector under section 5 ;
- (b) subject to clause (a), the Collector shall keep the waste land under requisition for such period as he considers necessary for enabling the person to whom possession is made over under sub-section (1) of section 6, to recover any capital or recurring expenditure incurred by such person and earn a reasonable margin of profit.

(2) The delivery of possession of any waste land to the person specified in an order made under sub-section (1) shall be a full discharge of any liability of the Collector and of the State Government to deliver possession to any person who may be entitled to claim possession thereof, but shall not prejudice any right in respect of the waste land which any person may be entitled by due process of law to enforce against the person to whom the possession of the waste land is so delivered.

(3) Where the person to whom the possession of any waste land is to be delivered under this section, cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery in his behalf, the Collector shall publish in the manner prescribed, a notice declaring that the waste land is released from requisition and shall cause a copy of the notice to be affixed on a conspicuous part of the waste land or if the waste land consists wholly of water area, in the neighbourhood of the waste land.

(4) As soon as a notice under sub-section (3) is published in the manner prescribed, the waste land shall cease to be subject to requisition and shall be deemed to have been delivered to the person entitled to the possession thereof and the Collector and the State Government shall be absolved from any further liability in respect thereof.

11. Appeals.—(1) Any person aggrieved by an order under sub-section (4) of Section 4, or by a notice under sub-section (1) of section 7, or by an order under section 8 may appeal to such authority as may be prescribed.

(2) The procedure on such appeals and the period of limitation for such appeals shall be such as may be prescribed.

(3) Any order passed on appeal by the authority referred to in sub-section (1) shall be final and shall not be called in question in any court.

12. Bar of proceedings.—(1) Save as otherwise expressly provided in this Act, any order, decision or determination made, any notification or notice published or served, any action taken or anything done in exercise of any power conferred by or under this Act shall not be called in question in any court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that the order, was so made by that authority.

13. Indemnity.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

14. Penalty.—(1) Whoever obstructs the Collector or any person acting under his orders, in taking possession of any waste land under section 5 or under sub-section (2) of section 7, shall be punishable with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.

(2) No court shall take cognizance of any offence punishable under this section save on complaint in writing made by the Collector.

15. Powers of court.—For the purpose of determining any matter under section 4 or 8 of this Act, the Collector may exercise such powers as are vested in a civil court in respect of—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) compelling the production of documents ;
- (c) issuing commissions for the examination of witnesses ; and
- (d) inspecting any property or thing concerning which any question may arise.

16. Power to make rules.—(1) The State Government may make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the manner in which public notice referred to in sub-section (2) of section 3, shall be given ;
- (b) the manner in which a notice under sub-section (3) of section 10 shall be published ;
- (c) the authority to whom an appeal under sub-section (1) of section 11 may be made ;

- (d) the procedure to be followed in appeals under section 11 and the period of limitation for appeals ;
- (e) entering upon any property (not being a homestead or a place of worship) and surveying such property for the purpose of determining any question or matter necessary to decide, for carrying out the purpose of this Act,
- (f) any other matter required to be prescribed.

West Bengal (9)

The West Bengal Premises Requisition and Control (Temporary Provisions) Act V of 1947.

3. Power to Requisition (1) Whenever it appears to the State Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing, requisition such premises either with or without any or all of the furniture, if any in such premises.

Provided that no premises exclusively used for the purpose of religious worship shall be requisitioned under this section.

* * * *

11. Procedure for fixing compensation. (1) Where any premises are requisitioned under this Act, there shall be paid to all persons interested compensation the amount of which shall be determined in the manner, and in accordance with the principles hereinafter set out, namely —

- (a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement ;
- (b) where no such agreement can be reached, the State Government shall appoint a District Judge or an Additional District Judge as arbitrator ;
- (c) the State Government may, in particular case, nominate a person having expert knowledge as to the nature of the premises requisitioned, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose ;
- (d) at the commencement of the proceedings before the arbitrator, the State Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation ;
- (e) the arbitrator shall, in determining the amount of compensation to be awarded to the landlord, have regard to the matters referred to in clause (a), (b) and (c) of section 12 :

Provided that notwithstanding anything contained in section 12 :—

- (1) in the case of an entire premises which was constructed after the commencement of the West Bengal Premises Requisition and Control (Temporary Provisions) (Second Amendment) Act, 1963, the amount payable annually shall not exceed 6½ per cent, of the

sum total of the cost of construction of such premises and the market price of the land on the date of commencement of construction, together with one-half of the total amount of municipal rates and taxes payable annually in respect of such premises ;

(2) in other cases, the amount payable shall not exceed—

(i) where the premises were let out on rent for a continuous period of not less than six months immediately before being requisitioned, such rent by more than 10 per cent., or

(ii) where the premises were not so let out, such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein and where there are similar premises in the locality, having regard also to the rent payable in respect of such premises.

(f) an appeal shall lie to the High Court against an award of an arbitrator ;

(g) save as provided in this section and in any rule made under this Act, nothing in any law for the time being in force relating to arbitration shall apply to arbitrations under this section.

(2) Compensation shall also be paid in respect of any damage done to the premises during the period of requisition other than what may have been sustained by normal wear and tear or by natural causes. When the amount of such compensation can be fixed by agreement, it shall be paid in accordance with such agreement ; where no such agreement can be reached, the matter shall be referred to the arbitrator.

Matters to be considered in fixing compensation by agreement.

12. In determining the amount of compensation which may be fixed by agreement under clause (a) of sub-section (1) of section 11, the Collector shall take into consideration—

(a) the rent payable in respect of the premises including, where the premises requisitioned with any furniture therein, the charges for the use of such furniture ;

(b) if, in consequence of the requisition of the premises, the person interested is compelled to change his residence or place of business, or to remove his furnitures or other articles to any other place, the reasonable expenses (if any) incidental to such change or removal ; and

(c) the damage or loss of income (if any) sustained by the person interested between the date of service of the order under sub-section (1) or under clause (b) of sub-section (3) of section 3, as the case may be, on such person and the date when the Collector takes possession of the premises.

Persons with whom agreement is to be entered into.

13. The Collector shall enquire into the respective rights of all persons interested in the premises and shall decide whether the compensation shall

be paid to any such person periodically or in lump. If the compensation is to be paid periodically the Collector shall, having regard to the terms and conditions under which the premises may have been let out to a tenant also decide whether the agreement for payment of compensation referred to in section 11 shall be entered into with such tenant or with the immediate landlord of such tenant.

Deposit of compensation in case of dispute.

14. When a dispute arises as to the person or persons to whom the amount of compensation or any part thereof is payable or as to the apportionment of the same or any part thereof, the Collector shall keep the amount in revenue deposit, till there has been a settlement of the dispute.

West Bengal (9A)

The West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act IX of 1963.

(The following Act having been assented to by the President, was published in the Calcutta Gazette Ext. Pt. III, dated 30.3.1963.)

* * *

2. Amendment of section 1 of West Bengal Act V of 1947.—In sub-section (4) of Section 1 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act 1947, for the words and figures “the 31st day of March 1963”, the words and figures “the 31st day of March 1964” shall be substituted.

West Bengal (9B)

The West Bengal Premises Requisition and Control (Temporary Provisions) (Second Amendment) Act No XXIX of 1963.

(Assent of the President was first published in the Calcutta Gazette, Ext. Pt. III, dated 15.10.1963.)

* * *

1. Short title.—This Act may be called the West Bengal Premises Requisition and Control (Temporary Provisions) (Second Amendment) Act, 1963.

2. Amendment of Section 1 of the West Bengal Act. V of 1963 :—In sub-section (4) of section 1 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (hereinafter referred to as the said Act), for the words and figures “the 31st day of March 1964” the words and figures “the 31st day of March 1966” shall be substituted.

3. Amendment of section 2.—For clause (ff) of section 2 of the said Act the following clause shall be substituted,

“(ff) ‘public purpose’ includes providing residential accommodations for the employees of the State Government where the provisions of such accommodation is, in the opinion of the State Government necessary in the interest of public service ;”

4. Insertion of new section 5A.—After section 5 of the said Act, the following section shall be inserted namely :—

“5A. Landlord to maintain supplies and services and make necessary repairs in requisitioned premises.—(1) The landlord of any premises requisitioned under this Act shall be bound at his own expenses to maintain therein such supplies and services as were provided by him for the premises immediately before the date of requisition and to make in the premises such repairs, not being petty repairs, as the Collector may consider necessary for the proper use and occupation thereof.

Explanation.—For the purposes of this section, “petty repairs” means repairs which do not cost more than ten rupees on any one account in a period of twelve calendar months.

(2) If, in respect of any premises, the Collector is satisfied that it is necessary to take any measures for the maintenance of any supply or service for the making of any repairs, which the landlord is, under sub-section (1), bound to maintain or make, the Collector may, by order served in the prescribed manner, require the landlord to take such measures within such time as may be specified in the order for maintaining the supply or service or for making the repairs, as the case may be.

(3) If the landlord fails to comply with an order made by the Collector under sub-section (2), the Collector may himself, if the estimated cost of the proposed measures does not exceed one hundred and fifty rupees, or with the previous sanction of State Government where it so exceeds, cause the measures specified in the order to be taken and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the compensation payable to the landlord ;

Provided that the amount which may be so decided in any year shall not exceed thirty three and one-third *per cent.* of the total compensation payable to the landlord in respect of the premises for that year.”

5. Amendment of s. 11.—For clause (e) of sub-section (i) of section 11 of the said Act, the following clause shall be substituted namely ;—

“(e) the Arbitrator shall in determining the amount of compensation to be awarded to the landlord, have regard to the matter referred to in clauses (a), (b) and (c) of section 12 ;

Provided that notwithstanding anything contained in section 12 :—

(1) in the case of an entire premises which was constructed after the commencement of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1963, the amount payable annually shall not exceed $6\frac{3}{4}$ per cent of the sum total of the cost of construction of such premises and the market price of the land on the date of the commencement of construction together with one-half of the total amount of municipal rates and taxes payable annually in respect of such premises ;

- (2) in other cases, the amount payable shall not exceed—
- (i) where the premises were let out on rent for a continuous period of not less than six months immediately before being requisitioned, such rent by more than ten *per cent*, or
 - (ii) where the premises were not so let out, such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein and where there are similar premises in the locality having regard also to the rent payable in respect of such premises.”

Notes

An arbitrator is not bound to fix the compensation at the rate at which the premises requisitioned bore at the time of requisition but at the same time he shall have regard to the same and can look into other similar premises in the neighbourhood (a).

When an amending Act takes effect.—The proviso clause (i) of s. 2 to clause (e) of sub-section (1) of section 11 was added by s. 5 of the West Bengal Premises Requisition and Control (Temporary Provisions) Second Amendment Act No. XXIX of 1963 which runs as follows :—

“in other cases, the amount payable shall not exceed—(i) where the premises were let out on rent for a continuous period of not less than six months immediately before being requisitioned, such rent by more than ten *per cent*.”

This amendment was made during the pendency of the appeal in High Court. On the question whether the above amendment applies to a case of which appeal is pending, *held*, “it is an agreed principle that the rights and liabilities of the party would be governed by the law as it stood when the proceedings started, or the cause of action arose, and no amendment of the law can affect such rights and liabilities until and unless it provides specifically or by implication (b), and there being no such provision the amendment has no application to the pending appeal, (a).

W. BENGAL (10)

The West Bengal Security Act, 1950

West Bengal Act, XIX of 1950

S. (29)

Requisitioning of property.

29. (1) If in the opinion of the State Government it is necessary or expedient so to do for preventing or suppressing subversive acts or for

(a) *Sagar Narayan Banerjee v. The State of West Bengal*, 75 C. W. N. 840, C. D. B.

(b) *United Provinces v. Mt. Atiqua Begum*, A. I. R. 1941, F. C. 16 and *Rafiqunnessa v. Lal Bahadur*, A. I. R. 1964, S. C. 1511.

maintaining supplies and services essential to the life of the community or for rehabilitating persons displaced from their residences or shops due to communal strife, it may by order in writing requisition any property, moveable or immoveable, and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning :

Provided that no place or premises used for the purpose of religious worship shall be requisitioned under this section.

(2) The State Government may use or deal with any property requisitioned under sub-section (1) in such manner as may appear to it to be expedient.

(3) The State Government shall pay compensation for any property requisitioned by it under sub-section (1), and the principles according to which and the manner in which such compensation is to be determined and given shall be as follows :—

(a) where the amount of compensation can be fixed by agreement, it shall be paid within three months in accordance with such agreement ;

(b) where no such agreement can be reached, the amount of compensation shall be such as an arbitrator appointed in this behalf by the State Government may award :

Provided that in the case of immoveable property, the arbitrator shall be a District Judge or an Additional District Judge ;

(c) in awarding the amount of compensation, the arbitrator shall have regard to the pecuniary loss attributable to the requisition and to any other circumstances which he considers to be just and proper.

(d) in the case of immoveable property, the State Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate another person for the said purpose :

(e) an appeal shall lie to the High Court against an award of the arbitrator except in cases where the amount of compensation awarded does not exceed five thousand rupees in lump or in the case of an amount payable periodically, two hundred and fifty rupees *per mensem* ;

(f) in the case of moveable property where immediately before the requisition, the property was by virtue of a hire-purchase agreement in the possession of a person other than the owner, the total compensation payable in respect of the requisition shall be apportioned between that person and the owner and in default of agreement, in such manner as the arbitrator referred to in clause (b) may decide to be just and proper ;

(g) the amount awarded as compensation by the arbitrator or ordered to be paid by the High Court on appeal in case coming under clause (e) shall be paid within three months of the date of the award or order made by the arbitrator or the High Court ;

- (h) save as provided in this sub-section and in any rules made under section 39, nothing in any other law for the time being in force shall apply to an arbitration under this sub-section.

(4) Where any immoveable property requisitioned under sub-section (1) is to be released from requisition, the State Government may after making such enquiry, if any, as it considers necessary, specify by order in writing the person who appears to the State Government to be entitled to the possession of such property.

(5) The delivery of possession of the immoveable property requisitioned under sub-section (1) to the person specified in an order made under sub-section (4) shall be a full discharge of the State Government from all liability in respect of such delivery, but shall not prejudice any rights in respect of such property which any other person may be entitled by due process of law to enforce against the person to whom possession of such property is so delivered.

(6) where the person to whom possession of any immoveable property requisitioned under sub-section (1) is to be given cannot be found or is not readily ascertainable or has no agent or other person empowered to accept delivery on his behalf, the State Government shall cause a notice declaring that such property is released from requisition to be affixed on some conspicuous part of such property and publish the notice in the *Official Gazette*.

(7) When a notice referred to in sub-section (6) is published in the *Official Gazette* the immoveable property specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof; and the State Government shall not be liable for any compensation or other claim in respect of such property for any period after the said date.

(8) Where any immoveable property requisitioned under sub-section (1) is released from requisition, compensation shall also be paid in respect of any damage done during the period of requisition to such property other than what may have been sustained by normal wear and tear or by natural causes. When the amount of such compensation can be fixed by agreement, it shall be paid in accordance with such agreement; where no such agreement can be reached, the matter shall be referred to an arbitrator and thereupon the provisions of sub-section (3) which are applicable to immoveable property shall, as far as may be, apply.

(9) The State Government may, with a view to requisitioning any property under sub-section (1), by order—

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be so specified;

(b) direct that the owner, occupier or person in possession of the property shall not without the permission of the State Government dispose of it or where the property is a building, structurally alter it or where the property is moveable remove it from the

premises in which it is kept till the expiry of such reasonable period as may be specified in the order.

(10) Without prejudice to any powers otherwise conferred by this Act any person authorised in this behalf by the State Government may enter any premises between sunrise and sunset and inspect such premises and any property therein or thereon for the purpose of determining whether, and, if so, in what manner, an order under this section should be made in relation to such premises or property or with a view to securing compliance with any order made under this section.

(11) (a) The State Government may, at any time by order in writing, require the owner of any immoveable property requisitioned under sub-section (1) to execute such repairs therein as it deems necessary and within such time as it may specify in the order.

(b) If the owner fails to execute or complete such repairs within the time specified, the State Government may cause such repairs to be executed or completed and the cost thereof shall be recoverable from the owner as if it were an arrear of land revenue.

(c) The State Government may, without prejudice to any other mode of recovery, deduct the cost referred to in clauses (b) or any part thereof from the compensation payable to the owner under sub-section (3).

(12) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

W. BENGAL (11)

The West Bengal Land Development and Planning

Act XXI of 1948.

An Act to provide for the acquisition and development of land for public purposes.

WHEREAS it is expedient to provide for the acquisition and development of land for public purposes :

It is hereby enacted as follows :

1. **Short title, extent and commencement.**—(1) This Act may be called West Bengal Land Development and Planning Act, 1948.

(2) It extends to the whole of West Bengal, but it shall not apply to the Calcutta Municipality as defined in clause (b) of section 2 of the Calcutta Improvement Act, 1911, or to any area to which that Act has been extended under sub-section (3) to section 1 thereof before the commencement of this Act.

(3) It shall come into force on the date on which the West Bengal Land Development and Planning Ordinance, 1948, ceases to operate.

Notes :—The Act does not contravene Art. 31 (2) of the Constitution, (a).
The settlement of refugees is a 'public purpose' within meaning of Art. 19 (5) of the Constitution (b),

2. Definition.—In this Act, unless there is anything repugnant in the subject or context.—

(a) The expressions "land", "Collector", and "Company" respectively have the same meanings as in Land Acquisition Act, 1894.

(b) "development scheme" means a scheme for the development of land for any public purpose.

(c) "Notified area" means an area declared under sub-section (1) of section 4 to be notified area.

(d) "public purpose" includes—

(i) the settlement of immigrants who have migrated into the Province of West Bengal on account of circumstances beyond their control,

(ii) the establishment of town, model villages and agricultural colonies,

(iii) the creation of better living conditions in urban and rural areas, and,

(iv) the improvement and development of agriculture, forestry, fisheries and industries ;

(e) "rules" means rules made under this Act.

Notes : The definition of public purpose in S. 2 (d) is not exhaustive.

Settlement of refugee families is a public purpose (b).

3. Appointment of the prescribed authority.—The Provincial Government may appoint, in accordance with the rules, an authority (hereinafter referred to as the prescribed authority) for carrying out the purposes of this Act.

Notes : S. 3 cannot affect proceedings pending before High Court instituted under Art. 226 of the Constitution of India (c).

4. Declaration of notified area.—(1) The Provincial Government may, by notification in the Official Gazette, declare any area specified in the notification to be a notified area if it is satisfied that any land in such area is needed or is likely to be needed for any public purpose and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the locality in such manner as he may think fit.

(2) Thereupon it shall be lawful for any person either generally or specially authorized by such Government in this behalf and for his servants and workmen,—

to enter upon and survey and take levels of any land in such area ;

to dig or bore into the subsoil ;

to do all other acts necessary to ascertain whether the land is suitable for such purpose ;

(a) *Naba Kumar Seal v. State of W. B.*, A. I. R. 1952 Cal. 870 reversed in A. I. R. 1961, S. C. 16 ; *Aswini K. Nath v. State of W. B.*, A. I. R. 1952, Cal. 679.

(b) *Hardeo Das v. State of W. B.*, A. I. R. 1951, Cal. 97.

(c) *State of W. B., v. Abdul Quader*, 60 C. W. N. 962.

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;
to mark such levels, boundaries and line by placing marks and cutting trenches ; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that the person so authorized shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district and such decision shall be final.

Notes : Although Sec. 4 speaks of State Government when the notification states 'whereas it appears to the Governor' it is not bad since the exercise of authority of State Government is vested in the Governor (d).

A declaration under Sec. 6 is invalid if simultaneously published with the notification under Sec. 4. (d¹). Nor is it possible to make simultaneous declarations under Secs. 4 and 7 (e).

Acquisition for settlement of refugees, of property belonging to refugee is for a valid purpose. (f). The decision of Government as to public purpose is conclusive. See A. I. R. 1951 Cal. 97 *Supra*.

In *Md. Taha & Ors v. State of West Bengal*. (g) A notification was issued under sec. 4 of Land Acquisition Act, 1894, for acquisition of certain plots of lands for settlement of immigrants who had migrated into West Bengal. It was argued that as the land in question was required for settlement of immigrants, it should have been acquired under the West Bengal Land Development and Planning Act, 1948 under Sec. 2(d)(i) which is sufficient and not under L. A. Act, 1894, and so it was not open to the State to switch over to the Central Act for aforesaid purpose. Further it was argued that L. A. Act 1894 was repugnant or inconsistent with the provisions of the State Act under Art. 254(2) of the Constitution, and to the extent of such repugnancy, the State Act must prevail. *Held* that there is no conflict between the provisions of the said two statutes. It is clear that the State Act is making a provision regarding disposal of land, a question on which the Central Act is silent and for that reason the doctrine of repugnancy has no application. Both the Act are pre-Constitution Acts. The only amendment made in Sec. 2 of the State Act was the insertion of the following clause, namely : "but does not include a purpose

(d) *Gouripada Bandopadhyaya v. S. Banerjee*, A. I. R. 1953, Cal. 704.

(d¹) *Aswini Kumar Nath v. State of W. B.*, A. I. R. 1952 Cal. 679.

(e) *Mohamed Saffi v. State of W. B.*, A. I. R. 1951, Cal. 97.

(f) *Hardeodas v. State of W. B.*, A. I. R. 1952, Cal. 857 ; *Ghanashyam Misra v. State of W. B.*, 1959, C. L. J. 15.

(g) *Md. Taha v. State of W. B.*, A. I. R. 1966, Cal. 359.

of the Union" and this amendment received the assent of the President and therefore it cannot be contended that the Act in its entirety or at any rate Sec. 2 of the State Act should prevail over the Central Act. Hence the aforesaid notification was not illegal.

Governments' power to cancel notification and satisfaction of Governor—

A notification and a declaration under Sec. 6 read with Sec. 7 of above-mentioned Act in respect of acquisition of land for the settlement of immigrants who had migrated into the State of West Bengal, were cancelled by order of the Governor. It was found that no scheme was prepared and all the provisions of the said Act were not followed although possession was taken. On the question whether Government could cancel, amend, vary or rescind orders, it was held that the Government has such power conferred under Sec. 11 of said Act particularly when no scheme was prepared, no agreement was entered into and there being procedural defect also. Further as the matter was not placed before the Minister in charge and the satisfaction of the Governor was not inherent in the notification, words used being ; 'it appears to the Governor' and the 'Governor is pleased' there being gulf of difference between these and 'satisfaction' of the Governor. Cancellation was justified. *Gopalpur Land Development Society v. State of West Bengal (h)*.

Section. 4 (1) of the West Bengal Land Development and Planning Act 1948 provides for twofold manner of publication of the notification. The object is to draw sufficient attention of public. The correction of an apparent error in the original notification and the cancellation of acquisition of parts of certain C. S. plots did not substantially change the character of notification in the particular case as they did not introduce any major change in the original notification and the petitioners were not prejudiced by any declaration under Sec. 6. Therefore the starting point of time for making objections under Sec. 4A is not later date of publication of the substance of the notification but the earlier date of its issue or publication in the Official Gazette. That being so, the publication of the substance of notification long after 30 days of the publication of notification in the Calcutta Gazette did not alert the petitioners in such manner that they could make their objections within time fixed under Sec. 4A of the Act ; the word 'may' in Sec. 4A is merely permissive. The failure to publish the said notification immediately after or sufficiently ahead of the expiry of time fixed to make objections, the effect is not to make the acquisition proceedings nugatory or void. Time can be extended. This has been held in *Iswar Mahadev v. State of West Bengal. (i)*

5. Preparation and sanctioning of development scheme,—(1)
The Provincial Government may direct the prescribed authority or, if it so thinks fit in any case, authorise any Company or local authority, to prepare, in accordance with the rules, a development scheme in respect

(h) *Gopalpur Land Dev. Society v. State of W. B.*, 70, C. W. N. 359.

(i) *Iswar Mahadev v. State of W. B.*, 66 C. W. N. 233.

of any notified area and thereupon scheme shall be prepared accordingly and submitted, together with such particulars as may be prescribed by the rules, to the Provincial Government for its sanction.

(2) A development scheme submitted to the Provincial Government under sub-section (1) may be sanctioned by it either without any modification or subject to such modifications as it may deem fit.

Notes : Where after or about the time when the notification under Sec. 4 was published the Government sent a copy of the tentative scheme to the Land Acquisition Collector's office and directed the Land Acquisition Collector to submit a report under Rule 5(2) of the Rules, the provisions of Sec. 5 (1) and Rules 5 (1) (a), 5 (2) and 5 (3) were held to have been completely ignored by Government : Opportunity to make representation against scheme must be clearly given in the notice under Rule 5 (2), (j).

Where there is nothing to show that the Land Planning Committee has applied its mind to, or considered the development scheme actually prepared by the Relief and Rehabilitation Department and it does not also appear that the Land Planning Committee had adopted this scheme it cannot be said that a development scheme in the strict sense of the term and as contemplated by the W. B. Land Development and Planning Act and Rules had been prepared. (k).

6. Declaration for acquisition of land needed for development scheme.—

(1) When a development scheme is sanctioned under sub-sec. (2) of Sec. 5 and the State Government is satisfied that any land in the notified area for which such scheme has been sanctioned is needed for the purpose of executing such scheme, a declaration to the effect that such land is needed for a public purpose shall, unless already made in pursuance of Sec. 7, be made by the State Government.

(1A) When the State Government is satisfied, after taking into consideration any report submitted under sub-section (2A) of section 4A, that any land in the notified area is needed for the public purpose specified in sub-clause (i) of clause (d) of section 2, a declaration to the effect that such land is needed for the said purpose shall be made by the State Government.

(2) The declaration shall be published in the *Official Gazette*, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed; its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) When the State Government makes a declaration under sub-section (1) or sub-section (1A), it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone or other minerals lying under the land or any particular portion of the land are not needed for the purpose for which the land is being acquired.

(j) *State of W. B. v. Panchkori Ghosh*, 61 C. W. N. 98.

(k) *Ghanashyam Misra v. State of W. B.*, 1959, C. L. J. 15 ; *State of W. B. v. Naba Kumar*, A. I. R. 1961, S. C. 16.

Notes

Classes of acquisitions—Schemes-necessity of :—In *State of West Bengal v. Naba Kumar Seal (I)* it was held by the Supreme Court that the Act contemplates acquisitions of two distinct classes, namely, (1) when Government had first considered and sanctioned a development scheme under Sec. 5 and then made a declaration, (2) when notification is made without any development scheme being prepared and sanctioned under Sec. 5. Once declaration is made under Sec. 6, the Land Acquisition Act, 1894 comes into operation subject to Sec. 8 of this Act which does not contemplate preparation of any scheme of development. Sec. 7 completely dispenses with this statutory necessity, A. I. R. 1954 Cal. 248 reversed, (I).

Approximate area of the plot to be acquired is to be stated in the declaration and if there are different plots which belong to different owners and only a part of a plot is to be acquired, definite indications should be given. The power of making a declaration or any rectification in respect of any declaration is conferred on the State Government under the provisions of said Act. It was wrong that an impugned declaration should be read subject to the clarification made by the Government, (m).

Lands requisitioned under D. I. Rules subsequently acquired—Requisition made under Rule 75 A of D. I. Rules 1939 must be de-requisitioned first and possession restored to the petitioners before proceedings under Sec. 6 of the West Bengal Act XXI of 1948 is started (n).

7. Special provision in cases of urgency.—In case of urgency, if in respect of any notified area the State Government is satisfied that the preparation of a development scheme is likely to be delayed the State Government may at any time, make a declaration under section 6, in respect of such notified area or any part thereof though no development scheme has either been prepared or sanctioned under section 5,

Notes

Section 7 is *intra vires* of Art. 31 of the Constitution (a). A declaration made under section 5 without complying with requirements of Rule 5 (2) in respect of giving opportunity to the person concerned to make representation against the development scheme is invalid, (b). Declaration is not effective until it is published in the official Gazette, (c). But the opinion of Government as to urgency is not justiciable (c). If the notice as under Rule 5(2) under Sec. 14 is not given, the opportunity to make representation is lost. In such cases the declarations under sections 6 or

(I) *State of West Bengal v. Naba Kumar Seal*, A. I. R. 1961, S. C. 16.

(m) *Ganesh Chandra Banerjee v. State of West Bengal*, 70 C. W. N. 387.

(n) *Dhone Gopal Mukherjee v. Secy. Land and Land Revenue, W. B.*, A. I. R. 1966, Cal. 348.

(a) *Golam Bari Molla v. State of West Bengal*, A. I. R. 1954, Cal. 248 ; *State of West Bengal v. Naba Kumar Seal*, A. I. R. 1961, S. C. 16.

(b) *Panch Kori Ghosh v. State of W. B.*, A. I. R. 1953, Cal. 568.

(c) *Tulsidas Jewraj v. State of W. B.*, A. I. R. 1952, Cal. 912.

8 (a) become invalid (d). Release of a portion of land covered by notification under Sec. 6 does not render the acquisition of the rest bad. No provision of this Act or the Land Acquisition Act compels such releases to be published (e). The notifications called for under Sections 4, 5 and 6 should be made as stipulated in the provisions to render them valid (f).

8. **Application of Act 1 of 1894 subject to special provision for compensation.**—After making a declaration under section 6 the State Government may acquire the land and thereupon the provisions of the Land Acquisition Act, 1894 (hereinafter in this section referred to as the said Act), shall, so far as may be, apply :

Provided that—

- (a) if in any case ¹[State] Government so directs, the Collector may, at any time after a declaration is made under Sec. 6, take possession in accordance with the rules of any *beel*, *baor*, *tank* or other watery area, or any waste or arable land in respect of which the declaration is made and thereupon such land shall vest absolutely in the Government free from all encumbrances.

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- (b) in determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in clause *first* of sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of the land on the date of publication under sub-section (1) of Section 4 for the notified area in which the land is included subject to the following condition, that is to say,—if such market value in relation to land acquired for the public purpose specified in sub-clause (i) of clause (d) of Section 2 exceeds by any amount the market value of the land on the 31st day of December, 1946 on the assumption that the land had been at that date in the state in which it in fact was on the date of the publication, the amount of such excess shall not be taken into consideration.

(2) When the amount of compensation has been determined under sub-section (1), the Collector shall make an award in accordance with the principles set out in Section 11 of the said Act, but no amount referred to in sub-section (2) of Section 23 of the said Act shall be included in the award.

(d) *Calcutta Pinjrapole Society v. S. Banerjee*, A. I. R. 1952, Cal. 891 ; *Aswini Kumar Nath v. State of W. B.*, A. I. R. 1952, Cal. 679.

(e) *State of West Bengal v. Naba Kumar Seal*, A. I. R. 1961, S. C. 16.

(f) *Sambhu Nath Ghosh v. Bejoy Lakshmi Cotton Mills*, A. I. R. 1959, Cal. 552.

¹ The word 'State' is substituted by Adaptation of Laws Order, 1950.

² Omitted by S. 7 (1)(c) of the W. B. Land Development and Planning (Amendment) Act XXIII of 1955.

Notes

It would seem at first that according to *Bela Banerjea's* case (g) the provisions of Section 8 would be *ultra vires*, but it is not, in view of the fact that the said Act is included in the Ninth Schedule of the Constitution and so protected even if they contravened any provision of Part III of the Constitution (h). The effect of the words "so far as maybe, apply" in Sec. 8 is to put the provisions of the Land Acquisition Act into the West Bengal Land Development and Planning Act, 1948 just as if they had been written into it for the first time. The decision of the Government as to the "Public purpose" is conclusive and cannot be questioned in any court of law. The question of application of Art. 19 of the Constitution of India does not arise, (i). Under this Act the object with which a property can be compulsorily acquired from a citizen must be a "public purpose" as has been defined in the Act. After the property has been acquired and possession taken whereby the land vested in the State Government it cannot alter the original object of acquisition. In other words having professedly acquired the property for a stated 'public purpose' the State Government cannot be heard to say at the time of paying compensation that the object was going to be altered so as to entitle the State Government to deprive of his just compensation, when the land has been acquired compulsorily, (j).

9. Power to dispose of land acquired under the Act :—(1) Where the State Government decides to lease or sell any land acquired in pursuance of this Act, the person or persons from whom the land was so acquired shall, in such manner as the State Government may direct, be offered a prior right to take on lease or to purchase the land on such terms and conditions as may be determined by the State Government.

(2) If, in any case, two or more persons claim to exercise a right offered under sub-section (1), the right shall be exercisable by such of the claimants as the State Government may determine after such enquiry as it thinks fit.

10. Execution of development scheme and disposal of land.—(1) The State Government may direct the prescribed authority to execute any development scheme sanctioned under sub-section (2) of Section 5 or cause it to be executed in accordance with the Rules and upon execution of the scheme as so directed the lands comprised therein shall be disposed of by the Collector in such manner as may be directed by the State Government.

(2) If the State Government so thinks fit, it may also empower a Company or a local authority to execute, at its own cost, any such development scheme and to dispose of the lands comprised therein on such terms and conditions including conditions relating to the manner of dis-

(g) *State of W. B. v. Bela Banerjea*, A. I. R. 1954, S. C. 170.

(h) *Phanindra Kumar Sanyal v. State of W. B.*, A. I. R. 1966, Cal. 429.

(i) *Mohamad Safi v. State of West Bengal*, 55 C. W. N. 463 : A. I. R. 1959, Cal. 97.

(j) *Anjendranath Nath Mitter v. State of West Bengal*, 66 C. W. N. 4.

posal of land as may be settled by the State Government and embodied in an agreement to be entered into by the State Government and the Company or local authority as the case may be:

11. Withdrawal of power from Company or local authority to execute development scheme or to dispose of land.—If, at any time, the State Government is satisfied that any of the terms or conditions contained in an agreement referred to in sub-section (2) of Section 10 is not being complied with, it may, by order served in accordance with the rules on the Company or local authority, as the case may be, withdraw the power conferred on it to execute any development scheme or to dispose of the lands comprised therein or both and may thereafter make such arrangement in that behalf as it may deem fit and proper.

12. Protection of action taken under this Act.—No suit, prosecution, or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

13. Delegation of powers.—The State Government may, by notification in the Official Gazette, direct that any or all of the powers conferred upon it by this Act shall be exercisable also by such authority subject to such conditions, if any, as may be specified in the notification.

14. Power to make Rules.—(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the designation, constitution and manner of appointment of the prescribed authority ;
- (b) the preparation of development schemes and the particulars to be submitted with development schemes referred to in sub-section (1) of Section 5 ;
- (c) the manner of taking possession of land referred to in clause (a) of the proviso to Section 8 ;
- (d) the execution of development schemes referred to in Section 10 ;
- (e) the manner of service of orders referred to in Section 11,

15. Continuance of action taken under West Bengal Ordinance II of 1948.—Any appointment or rules made or any notification issued or anything done or any action taken or any proceeding commenced in exercise of any power conferred by or under the West Bengal Land Development and Planning Ordinance, 1948, shall, on the said Ordinance ceasing to operate, be deemed to have been made, issued, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on 27th day of April, 1948.

West Bengal (12)

The West Bengal Land Reforms Act, 1955. Act X of 1956.¹

(As amended up to 1969)

[Assent of the President was first obtained and published in the Calcutta Gazette, Ext. of the 5th March, 1956.]

An Act to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights therein in the State.

It is hereby enacted in the Sixth Year of the Republic of India, by the Legislature of West Bengal, as follows :—

CHAPTER I

Preliminary

1. **Short title, extent and commencement**—(1) This Act may be called the West Bengal Land Reforms Act, 1955.

(2) It extends to the whole of West Bengal except the areas described in Schedule 1 of the Calcutta Municipal Act, 1951 (W. B. Act XXXIII of 1951), as deemed to have been amended under Section 594 of that Act.

(3) This section shall come into force at once and the remaining provisions of this Act, in whole or in part, shall come into force on such date and in such district as the State Government may from time to time by notification in the Official Gazette specify.

¹ For statement of Objects and Reasons, see *Calcutta Gazette, Ext.*, dated 10th Dec., 1954.

² By Notification No. 14810-L, Ref., dated 25-9-65, published in *Calcutta Gazette, Ext.*, Part I. Sub-section (1), (3), (4) and 6(A) of section 2, sub-section (2A), (2B) and (2C) of sec. 4, sec. 5A, 11, 12 and Chapter 11A, proviso to sub-section (1) and sub-section (2A), (2B), (5) and (6) of sec. 18, sub-sec. (3), (4) of sec. 19 and Chapters IV, VII and VIII, sec. 56 and clauses (1), (2), (3), (4) and (6) of sec. 59 have come into force from 1-12-65.

By virtue of notification No. 10730-L, Ref., 24th June, 1967 (published in *Calcutta Gazette Extraordinary*, Part I, dated June 26, 1967).—In exercise of the power conferred by the second proviso to sub-section (3) of section 3 of the West Bengal Transferred Territories (Assimilation of Lands) Act 1958, (West Bengal Act XIX of 1958) the Governor is pleased hereby to appoint the 30th June, 1967 as the date with effect from which the West Bengal Land Reforms Act 1955 (West Bengal Act X of 1956) specified in item (4) of schedule III to the said Act, shall extend to the transferred territories.

By notification No. 10732-L, Ref., 25th June 1967.—In exercise of the power conferred by sub-section (3) of section 1 of the West Bengal Land Reforms Act 1955 (West Bengal Act X of 1956), the Governor is pleased hereby to specify the 1st day of July, 1967 as the date on which the following provisions of the said Act shall come into force in all the areas transferred, from Bihar to West Bengal under the Bihar and West Bengal (Transfer of Territories) Act, 1956 (Act 40 of 1956), namely :—section 2, section 3, sec. 16, sec. 17, except sub-section (3) thereof; sec. 18, sec. 18A, sec. 19, sec. 19A, sec. 19B, sec. 20, sec. 21, sec. 57, sec. 58, sec. 59; so far as it refers to clause (7) thereof; and sec. 60.

2. **Definitions**—In this Act, unless there is anything repugnant in the subject or context,—

(1) “agricultural year” means the Bengali year commencing on the first day of Baisakh :

(2) “bargadar” means a person who under the system generally known as *adhi*, *barga* or *bhag* cultivates the land of another person on condition of delivering a share of the produce of such land to that person :

(3) “certificate” means a certificate signed under the Bengal Public Demands Recovery Act, 1913 (Ben. Act. III of 1913)

(4) “Collector” means the Collector of a District or any other officer appointed by the State Government to discharge any of the functions of a Collector under this Act :

(5) “consolidation” includes re-arrangement of parcels of land comprised in a holding or in different holdings for the purpose of rendering such holding or holding more compact ;

(6) “holding” means the land or lands held by the raiyat and treated as a unit for assessment of revenue :

(6A) “Incumbrance” means any lien, easements or other right or interest, created by a *raiya*t on his holding or in limitation of his own interest therein but does not include the right of the *bargadar* to cultivate the land of the holding :

(7) “land” means agricultural land ²(other than land comprised in a tea garden which is retained under sub-section (3) of Section 6 of the West Bengal Estates Acquisitions Act, 1953 and includes homesteads),

Explanation :—“Homestead” shall have the same meaning as the the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954),

(8) “personal cultivation” means cultivation by a person of his own land on his own account—

(a) by his own labour, or

(b) by the labour, of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind or both :

(9) “prescribed” means prescribed by rules made by the State Government under this Act :

³(9A) “Prescribed Authority” means an authority appointed by the State Government by notifications in the Official Gazette, for all or any of the purposes of this Act.

(10) “raiya”t means a person who holds lands for purpose of agriculture :

(11) “revenue” whatever is lawfully payable or deliverable in money or kind or both by a raiyat under the provisions of this Act in respect of the land held by him :

² Added by s. 2(1) of the West Bengal Land Reforms (Amendment) Act XVIII of 1965, with retrospective effect.

³ Inserted by Section 2(2), *ibid*.

⁴ Inserted by Section 2 of the Land Reforms (Amendment) Act XI of 1966.

(12) "Revenue Officer" means any officer whom the State Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue Officer in any area -

3. Act to override other Laws etc.—The provisions of this Act shall have effect notwithstanding anything in any other law or any custom or usage or in any contract expressed or implied in consistent with the provisions of this Act.

* * * *

6. **Limitation on transfer** :—(1) The State Government shall be entitled subject to the provisions of Section 8 to take over by order made in this behalf, any land owned by a raiyat, whether as a result of transfer or otherwise in excess of the limits prescribed by sub-section (3) of Section 4.

Provided that the raiyat shall have the option of choosing the land to be retained by him within such limits :

(2) In all cases where the State Government takes over any land under sub-section (2) there shall be paid to the raiyat as compensation an amount equal to the market value of interest of the transferor in the land on the date of the transfer.

CHAPTER V

Consolidation of lands comprised in Holdings and Co-operative Farming Societies

39. **Acquisition of holding for Consolidation**.—The State Government may—

- (a) on the representation of raiyats in any area, or
- (b) on its own motion,

acquire the lands in any area on payment of compensation to the raiyats owning them when the lands comprised in the holdings of the raiyats in such area are not in compact blocks, if the State Government is of the opinion that the lands comprised in the holding in such area should be consolidated :

Provided that the State Government shall not undertake consolidation of lands as aforesaid unless two-thirds or more the owners of the holdings which will be affected by such consolidation agree to it.

40. **Redistribution of land after acquisition**.—On such acquisition being made, the State Government shall re-arrange the holdings so that lands comprised in each is in a compact block and re-allot them to the raiyats whose lands have been acquired, in such manner as it thinks fit, ensuring that each raiyat gets a holding comprising the same area, and, as far as possible, lands of the same quality and value as before the consolidation :

Provided that no raiyat shall be entitled to receive any land in excess of the area held by him prior to acquisition :

Provided further that on such allotment being made there shall be deducted from the amount of compensation payable to a raiyat under section 39 the value of the land allotted to him after acquisition.

41. **Transference of incumbrance on holding**—If the holding of a raiyat which is acquired for the purpose of consolidation is subject to any incumbrance, such incumbrance shall be deemed to be transferred and attached to the land which is allotted to the raiyat after acquisition and to the compensation, if any, payable to him under this Chapter and shall cease to have any effect against the land from which it has been transferred.

* * * *

53. **Delegation of powers by the State Government**—The State Government may by a notification in the Official Gazette delegate any of the powers under sub-section (2A) of Section 4, Section 6, Section 22, Section 39 and Section 40 to be exercised by the prescribed authority subject to such reservation as may be specified in the notification.

Application of the Act to Transferred Territories,—Notification No. 17885-L. Ref./6M-278/69 dated 25th September 1969—*** the Government is pleased to hereby specify 1st day of October 1969 as the date on which the following provisions of the Act shall come into force in all the areas transferred from Bihar to West Bengal under the Bihar and West Bengal (Transfer of Territories) Act 40 of 1956 namely :—

All the provisions of Chapter II, IIA, IV, VI, VII and VIII and section 15, sub-section (3) of Section 17, Sections 39, 40, 42, 53, 54, 55 and 56 and clauses (1), (2), (3), (4), (5) and (6) of Section 59.

West Bengal (12A)

THE WEST BENGAL LAND REFORMS (AMENDMENT) ACT, 16 OF 1970

(*Published in Calcutta Gazette Ext. dated 13.7.70 Part V.*)

Enacted by the President in the Twenty-first Year of the
Republic of India.

*An Act further to amend the West Bengal Land Reforms Act,
1955.*

In exercise of the powers conferred by Section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1970, the President is pleased to enact as follows :—

1. **Short title and commencement** :—(1) This Act may be called the West Bengal Land Reforms (Amendment) Act, 1970.

(2) It shall come into force at once.

2. **Insertion of new section 15A** :—After section 15 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the principal Act), the following section shall be inserted, namely :—

“15A. Continuation of right of cultivation on *bargadar*'s death.—

(1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, where a *bargadar*, cultivating any land, dies at a time when cultivation of such land by the *bargadar* was continuing, the cultivation of such land may be continued by the lawful heir of the *bargadar* or where there are more than one lawful heir, by such lawful heir of the *bargadar* as all the lawful heirs of the *bargadar* may determine within the prescribed period :

Provided that where the lawful heirs of the *bargadar* omit or fail to make a determination as required by this sub-section, the officer or authority appointed under sub-section (1) of section 18 may nominate one of the lawful heirs of the *bargadar*, who is in a position to cultivate the land personally, to continue the cultivation thereof.

(2) The lawful heir of the *bargadar* who is determined or nominated for the cultivation of the land shall cultivate the land subject to such terms and conditions as may be prescribed.

(3) Where—

(a) no lawful heir of the *bargadar* is in a position to cultivate the land personally, or

(b) the lawful heirs of the *bargadar* fail to determine, within the prescribed period, the heir by whom the cultivation of the land will be continued and the officer or authority appointed under sub-section (1) of section 18 also omits or fails to nominate, within the prescribed period, a lawful heir of the deceased *bargadar* for the continuation of the cultivation of the land, or

(c) the person determined or nominated under sub-section (1) omits or fails to take any steps, within the prescribed period, for the continuation of the cultivation of the land, cultivation of the land may be continued by such person, whether an heir of the deceased *bargadar* or not, as may be nominated by the person whose land was cultivated by the deceased *bargadar*.”

6. Amendment of section 19. In section 19 of the principal Act,—

(a) in sub-section (1), for the word “Munsif”, wherever it occurs, the words “Sub-Divisional Officer” shall be substituted ;

(b) after sub-section (2), the following sub-sections shall be inserted, namely :—

“(2A) Every appeal pending before any Munsif at the commencement of the West Bengal Land Reforms (Amendment) Act, 1970, shall, on such commencement, stand transferred to, and be disposed of, by the Sub-Divisional Officer having jurisdiction in relation to the area in which the land is situated and on such transfer every such appeal shall be dealt with from the stage at which it was so transferred and shall be disposed of in

accordance with the provisions of this Act as amended by the West Bengal Land Reforms (Amendment) Act, 1970.

(2B) The Sub-Divisional Officer may transfer any appeal, whether transferred to, or filed before, him, for disposal to any officer not below the rank of a Sub-Deputy Collector, subordinate to him, but senior in rank and position to the officer or authority against whose order the appeal has been preferred and every such appeal shall be dealt with from the stage at which it was so transferred and shall be disposed of in accordance with the provisions of this Act as amended by the West Bengal Land Reforms (Amendment) Act 1970."

(c) in sub-section (3) and (4), for the word "Munsif" the words "Sub-Divisional Officer or other officer" shall be substituted.

7. **Insertion of new section 20A** :—After section 20 of the principal Act, the following section shall be inserted, namely :—

"20A. **Setting aside of order for termination of cultivation by *bargadars*.**

—Notwithstanding anything contained in any law for the time being in force, where, before the commencement of the West Bengal Land Reforms (Amendment) Act, 1969, an order for the termination of cultivation of any land by a *bargadar* had been made under clause (b) of sub-section (1) of section 18 but such order has not been given effect to (whether by reason of the operation of any law or otherwise), before the commencement of the West Bengal Land Reforms (Amendment) Act, 1970, then such order shall, on such commencements, stand vacated and the officer or authority by whom such order was made shall, after giving notice to the parties concerned, decide the dispute in accordance with the provisions of section 17 as amended by the West Bengal Land Reforms (Amendment) Act, 1970."

8. **Amendment of section 21.** In Section 21 of the principal Act, in sub-section (1), the words "Save as provided in section 19" shall be omitted.

West Bengal (13)

The West Bengal Panchayat Act (1) of 1957

CHAPTER IX

62. **Allocation of properties to Gram Panchayat.**—The State Government may allocate to a Gram Panchayat any public property situated within its local jurisdiction and thereupon such property shall vest in and come under the control of the Gram Panchayat.

63. **Acquisition of land for Gram Panchayat.**—(1) Where a Gram Panchayat requires land to carry out any of the purposes of this Act, it may negotiate with the person or persons having interest in the said land, and if it fails to reach an agreement it may make an application to the

District Magistrate for the acquisition of the land, who may, if he is satisfied that the land is required for a public purpose, take steps to acquire the land.

(2) Such land shall, on acquisition and on payment of compensation awarded in accordance with the law under which the acquisition was made, vest in the Gram Panchayat.

Explanation.—“Land” includes immovable property of any kind and benefits which arise out of land and things attached to the earth or permanently fastened to any thing attached to the earth.

West Bengal (14)

The West Bengal Estates Acquisition Act, 1953.

WEST BENGAL ACT I OF 1954.¹

(As amended upto Act XXII of 1964)

[12th February 1954.]

An Act to provide for the State acquisition of estates, of rights of intermediaries therein and of certain rights of raiyats and under-raiyats^{1a} [and of the rights of certain other persons in lands comprised in estates].

It is hereby enacted as follows :—

NOTES

By operation of this Act all the estates, rights of intermediaries therein and all lands held by raiyats and under-raiyats and their rights therein and the rights of certain other persons in lands comprised in estates have vested in the State. This State acquisition necessitated reforms of the law relating to land tenure and has thus led to the passing of the West Bengal Land Reforms Act, 1955 (W. B. Act X of 1956). Save and except the provisions relating to *bargadars*, the other provisions of the W. B. Act X of 1956 have not been yet brought into force.

Section 59, clause (5) of the W. B. Land Reforms Act, 1955, provides for the repeal of the Bengal Tenancy Act, 1885 (8 of 1885) ; but that provision has not as yet been brought into force. Hence, the provisions of the Bengal Tenancy Act must be deemed to govern the rights and incidents of the tenancy for agricultural purposes (a).

CHAPTER 1.

PRELIMINARY.

1. **Short title and extent.**—(1) This Act may be called the West Bengal Estates Acquisition Act, 1953.

¹ Added by the West Bengal Estates Acquisition (Amendment) Act, 1961 (W. B. IX of 1961) with retrospective effect.

(a) *Ganesh Chandra Mahata v. Sudarshan Dey*, 62, C. W. N. 360.

(2) It extends to the whole of West Bengal except the areas described in Schedule I of the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951), as deemed to have been amended under section 594 of that Act.

Notes :—The area of the Tollygunj Municipality has been included within the limits of Calcutta under sec. 594 of the Calcutta Municipal Act, 1951.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

- (a) "agricultural year" means the Bengali year commencing on the first day *Baisakh* ;
- (b) "agricultural land" means land ordinarily used for purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying fallow for the time being ;
- (c) "charitable purpose" includes the relief of the poor, medical relief or the advancement of education or of any other object of general public utility ;
- (d) "Collector" means the Collector of a district or any other officer appointed by the State Government to discharge any of the functions of the Collector under this Act ;
- (e) "date of vesting" means the date mentioned in the notification under sub-section (1) of section 4 ;
- (f) "estate" or "tenure" includes part of an estate or part of a tenure ;
2[***]
- (g) "homestead" means a dwelling house together with—
any courtyard, compound, garden, out-house, place of worship, family grave-yard, library, office, guest-house, tanks, wells, privies, latrines, drains and boundary walls.
annexed to or appertaining to such dwelling house ;
- (h) "incumbrance" in relation to estates and rights of intermediaries therein does not include the rights of a *raiyat* or of an under-*raiyat* or of a non-agricultural tenant³ [but shall, except in the case of land allowed to be retained by an intermediary under the provisions of section 6, include all rights or interests of whatever nature, belonging to intermediaries or other persons, which relate to lands comprised in estates or to the produce thereof] ;
- (i) "intermediary" means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a *raiyat* or a non-agricultural tenant⁴ [and includes a service tenure-holder and, in relation to mines and minerals, includes a lessee and a sub-lessee] ;
- (j) "non-agricultural land" means land other than agricultural land⁵ [or other than land comprised in a forest] ;

² Clause (ff), was omitted with retrospective effect by the W. Bengal Act IV of 1967.

³ Added with retrospective effect by W. Bengal Estates Acquisition (Second Am.) Act, 1957 (W. Bengal Act XXV of 1957).

⁴ Added with retrospective effect by W. Bengal Act IV of 1957.

⁵ Added with retrospective effect by W. Bengal Act XXV of 1957.

- (k) "non-agricultural tenant" means a tenant of non-agricultural land who holds under a proprietor, a tenure-holder ^{5a}[a service tenure-holder] or an under-tenure-holder ;
- (l) "notified area" means a district or part of a district in respect of which a notification has been duly published under section 4 ;
- (m) "prescribed" means prescribed by rules made under this Act ;
- (n) "religious purpose" means a purpose connected with religious worship, teaching or service or any performance of religious rites ;
- (o) "rent" means whatever is lawfully payable or deliverable in money or kind or both, by a tenant to his landlord, on account of the use or occupation of the land held by the tenant and includes also money recoverable under any enactment for the time being in force as if it was rent ;
- (p) expressions used in this Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act, 1885, applies, the same meaning as in that Act and in relation to other areas meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits.

3. Act to override other laws, etc.—The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law or in any contract express or implied or in any instrument and notwithstanding any usage or custom to the contrary.

^{5b}[Provided that nothing in this Act shall apply to any land held by a Corporation, not being a local authority or a Company, established by or under any law for the time being in force :

Provided further that nothing in this Act shall affect any land possession of which was taken by the State Government before the issue of a notification under section 4, in furtherance of any proposal for requiring such land, whether any formal proceedings for such acquisition were started or not, and proceeding for acquisition of such land may be continued or commenced as if this Act had not been passed.]

Notes

The provisions of this Act override all usages and customs, provisions in any other law or in any contract, express or implied, which conflict with them.

In conflict between Sec. 73 (2), T. P. Act and Sec. 26, W. B. Estates Acquisition Act, the provisions of the latter section override the provisions of the former by virtue of section 3 of this Act. [*In re Cooch Behar Bank Ltd. (In Liquidation)*, 62 C. W. N., 911.]

But there is no provision in the West Bengal Estates Acquisition Act of 1953 which expressly provides that the raiyats, until the Government actually takes over the land, will not continue to be governed by the

^{5a} Added with retrospective effect by W. Bengal Act XXII of 1960 (The West Bengal Estates Acquisition (Amendment) Act, 1960.

^{5b} Added with retrospective effect by W. Bengal Act XVII of 1960.

provisions of the Bengal Tenancy Act and as there is nothing expressly contrary thereto in the West Bengal Estates Acquisition Act of 1953, the provisions relating to pre-emption of the raiyati rights will continue to be in force. [*Ganesh Chandra Mahata v. Sudarshan Dey*, 62 C. W. N. 362 at 366. *Shiba Prasad v. Manmatha*, 65 C. W. N. 811.]

The Act shall not apply to any land held by a Corporation, established by or under any law, which is neither a local authority nor a Company ; and (2) the Act shall not affect any land, possession whereof was taken by the State Government before the issue of a notification under sec. 4 in furtherance of any proposal for acquiring such land.

CHAPTER II

Acquisition of Estates and of the rights of Intermediaries therein

4. Notification vesting estates and rights of intermediaries—(1) The State Government may from time to time by notification declare that with effect from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State free from all incumbrances.

(2) The date mentioned in every such notification shall be the commencement of an agricultural year ; and the notifications shall be issued so as to ensure that the whole area to which this Act extends, vests in the State on or before the 1st day of *Baisakh* of the Bengali year 1362.

(3) Every such notification shall be published in the first instance, in at least two issues of each of two newspapers (one of which must be in the Bengali language) circulating in West Bengal and also by affixing at each police-station and sub-registry office within the district or part of the district, specified in the notification and by beat of drums and in any other manner, if any, as may be prescribed.

(4) When the State Government is satisfied that the notification has been published in the first instance as required under sub-section (3), it shall issue the notification in the *Official Gazette*.

(5) The publication of the notification in the *Official Gazette* shall be conclusive evidence that all requirements relating to publication in the first instance as mentioned in sub-section (3) have been complied with and also of the due publication of the notification and of notice to all persons affected by the notification.

^a[(6) Notwithstanding anything contained in the foregoing sub-sections, an intermediary may, at any time before the 15th day of February, 1955, apply to the State Government to have all his estates, tenures, under-tenures and other rights as intermediary, to be vested in the State and the State Government may, after considering the facts and circumstances of the case, if it thinks fit, make an order granting the application.

^a Substituted for original sub-sec. (6) by West Bengal Estates Acquisition (Second Amendment) Act, 1954 (W. Bengal XXXVIII of 1954).

Upon the order being made, all such estates, under-tenures and rights of the intermediary, shall vest in the State Government on and from the date of the order, free from all incumbrances other than the rights of subordinate intermediaries, (if any) and the provisions of this Act, except the foregoing sub-sections and clauses (a) and (b) of section 5, shall, with necessary modifications, apply as if, in relation to such estates, tenures, under-tenures and rights of the intermediary, references to the publication of a notification under section 4 or to the date of vesting were reference to the order granting the application or to the date of such order, and references to the vesting under section 5 were references to the vesting under this sub-section. The State Government shall have also power to make such orders for giving effect to the provisions of this sub-section as it deems necessary.]

Notes

Under sub-sec. (2) all estates and rights of intermediaries have vested in the State with effect from the 1st of *Baisakh*, 1362 B. S. corresponding to the 15th April, 1955 at the latest. The State Government by a notification under Sec. 49 of the Act appointed the 10th April, 1956 as the date when the provisions of Chapter VI came into force; see Department of Land and Land Revenue Notification No. 6804 L. Ref., dated the 9th April, 1956, published in the Calcutta Gazette, *Extraordinary*, dated 9-4-56, Pt. I, p. 743. On notifications by the State Government under this section read with Sec. 52 all lands held by *raiya*s and under-*raiya*s and the rights of every *raiya* and under-*raiya* therein situated in all the districts of West Bengal vested in the State free from all encumbrance with effect from the 1st day of *Baisakh*, 1363 B.S.; see Notification No. 6830-6843 L. Ref., dated the 10th April, 1956, published under Notifications No. 7194-7207 L. Ref., dated the 14th April, 1956, in the Calcutta Gazette, *Extraordinary* dated 13-4-54, Pt. I, pp. 761-765.

An incorporeal right of fishing unconnected with the soil is a benefit arising out of land, that is to say, a *profit a prendre* and as such it vests in the State Government by operation of Secs. 4 and 5 of the Act (a). A *profit a prendre* is immovable property within the meaning of the Transfer of Property Act, (b).

A Jagir, i. e., an interest in land granted by Government in recognition of services rendered, is not a political pension, but an "estate" within the meaning of Sec. 4, (c).

13. Management of estates and interests of intermediaries vested in the State.—All estates and all interests of intermediaries therein, which have vested in the State under a notification under section 4 and which have been taken possession of by the Collector under section 10 shall be

(a) *Ganesh Chandra Khan v. State of West Bengal*, 62 C. W. N. 49; A. I. R. 1958, Cal. 114.

(b) *Ananda Behara v. State of Orissa*, A. I. R. 1956, S. C. 17.

(c) *Azizur Subhan v. State of W. B.*, 63 C. W. N. 666.

managed according to such rules as the State Government may from time to time make in this behalf :

Provided that the State Government may at any time, if it so thinks fit, entrust the management of such estates and such interest to any statutory authority on such terms and conditions, as it may, by general or special order, fix and the statutory authority shall manage such estates and such interests in accordance with rules made by the State Government in this behalf.

Notes :—Rule 12 prescribes rules for management of estates which have vested in the State.

6[16A. Exclusion of estates and interests relating to mines and minerals.—A Compensation Officer shall, in preparing under section 14 or section 15 a Compensation Assessment Roll, exclude from the income of an intermediary whose rights in mines and minerals have vested in the State his income from such mines and minerals and shall after assessment of compensation for his other estates and interests refer the case to the Compensation Officer appointed under Chapter IV for assessment of compensation in accordance with the provisions of that Chapter.]

17. Assessment of compensation.—(I) After the net income has been computed under section 16, the Compensation Officer shall ^{6a}***] proceed to determine the amount of compensation payable to intermediaries in accordance with the following table, namely :—

Net Income	Amount of compensation payable.
For the first Rs. 500 or less of net income.	Twenty times of such net income.
For the next Rs. 500 or less of net income.	Eighteen times of such net income.
For the next Rs. 1,000 or less of net income.	Seventeen times of such net income.
For the next Rs. 2,000 or less of net income.	Twelve times of such net income.
For the next Rs. 1,000 or less of net income.	Ten times of such net income.
For the next Rs. 15,000 or less of net income.	Six times of such net income.
For the next Rs. 80,000 or less of net income.	Three times of such net income.
For the balance of the net income.	Two times of such balance of net income.

⁷[Provided that in the case of an intermediary referred in clause (i) of sub-section (1) of section 6, compensation payable to such intermediary shall be a perpetual annuity ⁸[or where the interest of the intermediary is terminable or is liable to be exhausted, an annuity or such number of years as ^{8a}[may be prescribed], having regard to the circumstances,] equal to the net annual income from the estate or interest of such intermediary

⁶ Inserted by W. Bengal Act XVII of 1960.

^{6a} The words, "for the purpose of preparing the Compensation Assessment Roll for the notified area", omitted by W. Bengal Act XVII of 1960.

⁷ Substituted with retrospective effect for original proviso by W. Bengal Act XXXV of 1955.

⁸ Inserted with retrospective effect by W. Bengal Act IV of 1957.

^{8a} Substituted for "the State Government may prescribe by rules" by W. Bengal Act XVII of 1960.

excluding the portion thereof which the intermediary has retained under the provisions of sub-section (1) of Section 6,]

^{8b} [Provided further that in the case of an intermediary—

(a) whose income consisted only of rent in kind the commuted value of which does not exceed Rs. 1,000 per year, or

(b) whose income from rent in kind taking the commuted value thereof together with his other income from his estates or interests which have vested in the State under section 5 does not exceed the sum mentioned in clause (a), the compensation payable to such intermediary shall be an annuity, payable for a period of twenty-five years, equal to the net annual income from the estates or interests, in respect of which the intermediary received rent in kind and in the case of an intermediary mentioned in clause (b), the amount of such annuity shall be excluded from his net income for the purpose of assessing the compensation payable to him under the general provisions of sub-section (1).]

(2) (a) Where an intermediary is the holder of a temporary interest, the compensation payable to such intermediary in respect of such interest ^{8c}[shall not exceed the amount of net income which the intermediary would have derived from such interest during the unexpired period thereof], or

(b) where the interest of an intermediary is subject to a usufructuary mortgage, the compensation payable to such intermediary shall be apportioned between him and his usufructuary mortgagee ^{8d}[in such proportion as may be just and fair having regard to the unexpired period of the usufructuary mortgage] :

^{8e}[* * *]

^{8f}[(3) The sum referred to in sub-clause (v) or sub-clause (vi) of clause (b) of sub-section (1) of section 16 shall be payable to the Corporation, institution or person as the case may be, as a perpetual annuity.]

18. [Preliminary publication of Compensation Assessment Roll and disposal of objections] Repealed by the West Bengal Estate Acquisition (Amendment) Act, 1960 (W. Ben. XVII of 1960), S. 12.

19. Contents of the order of Compensation Officer.—The order of the Compensation Officer deciding an objection under ^{8g}[section 15 or section 15A] or an order under sub-section (2) of section 25 shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

^{8b} Added by W. Bengal Act IX of 1961.

^{8c} Substituted for the words "shall be paid out of the compensation which would, but for the existence of such temporary interest, be payable to his immediate superior landlord" by *ibid*.

^{8d} Added by *ibid*.

^{8e} Certain words omitted by *ibid*.

^{8f} Substituted by W. Bengal Act XXII of 1963.

^{8g} Substituted for the words "sub-section (1) of section 18" by W. Bengal Act XVII of 1960.

20. *Appeals*—(1) An appeal, if presented within ninety days from the date of the order appealed against, shall lie from every order passed by a Compensation Officer under ^{8a}[section 15 or section 15A] or under proviso (b) of sub-section (2) of section 25 to a Special Judge appointed for the purpose of this section.

(2) An appeal shall lie to the High Court from every order passed on appeal by a Special Judge under sub-section (1) on any of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (Act V of 1901).

22. *Correction of bona fide mistakes*.—A Compensation Officer may, on application or of his own motion at any time before payment of compensation under Section 23, correct any entry in the Compensation Assessment Roll, which he is satisfied has been made owing to *bona fide mistake* :

Provided that no such correction shall be made if an appeal affecting such entry has been presented under Section 20 or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

23. *Manner of payment of compensation*.—⁹[(1) (a) as soon as may be after the date of the final publication of a Compensation Assessment Roll under section 21, the Compensation Officer shall, in the prescribed manner; ^{9a}[proceed to make payment] of the compensation to the intermediary who is entitled to such compensation in terms of the Compensation Assessment Roll together with interest at the rate of three *per centum per annum* of such compensation accruing from the date of vesting ¹⁰[the date of final publication of the Compensation Assessment Roll :]

Provided that such payment shall be without prejudice to the right of the intermediary to file an appeal under section 20.

Provided that in assessing interest under this clause, interest on all *ad interim* payments made under section 12 shall, from the date of any such payment of the date of final publication of the Compensation Assessment Roll be excluded ;

Provided further that in any case where the amount of compensation enhanced as a result of an appeal under section 20, interest shall, subject to the provisions of the first proviso, be calculated from the date of vesting to the date of final publication of the Compensation Assessment Roll on the amount as determined on appeal.

^{10a}[(1A) Where the intermediary is a limited owner, the Compensation Officer shall make payment to such intermediary of only the amount of interest calculated at the rate mentioned in sub-section (1) on the compensation payable for the estates or interests vesting in the State less such amount, if any as may have been paid under the provisions

^{8h} Substituted for the words "sub-section (1) of section 18" by W. Bengal Act XVII of 1960.

⁹ Substituted for the original sub-sec. (1) by W. Bengal Act IX of 1961.

^{9a} Substituted by W. Bengal Act XXII of 1964.

¹⁰ Substituted by W. Bengal Act XXII of 1963 with retrospective effect.

^{10a} Inserted by W. Bengal Act IX of 1961.

of sub-section (4) of section 12, before depositing the amount of compensation with the Collector under section 24.]

(2) ^{10b}[Subject to the provisions of section 12 and sub-section (3) of section 26, all sums payable] as compensation to an intermediary shall be paid in the manner following, that is to say ;—

(a) payment in cash shall be made in accordance with the following table, namely :

TABLE

Net Income	Payment to be made in cash
For the first Rs. 250 or less of the net income.	100 <i>per centum</i> of the amount of compensation payable in respect of such net income.
For the next Rs. 250 or less of the net income.	50 <i>per centum</i> of the amount of compensation payable in respect of such net income.
For the next Rs. 500 or less of the net income.	45 <i>per centum</i> of the amount of compensation payable in respect of such net income.
For the next Rs. 2,000 or less of the net income.	40 <i>per centum</i> of the amount of compensation payable in respect of such net income.
For the next Rs. 2,000 or less of the net income.	30 <i>per centum</i> of the amount of compensation payable in respect of such net income.
For the next Rs. 25,000 or less of the net income.	25 <i>per centum</i> of the amount of compensation payable in respect of such net income.
For the next Rs. 70,000 or less of the net income.	20 <i>per centum</i> of the amount of compensation payable in respect of such net income.
For the next Rs. 1,00,000 or less of the net income.	15 <i>per centum</i> of the amount of compensation payable in respect of such net income.
For the balance of the net income.	12 <i>per centum</i> of the amount of compensation payable in respect of such net income.

(b) The balance of the compensation shall be paid in non-negotiable bonds carrying interest at three *per centum per annum* with effect from the date of issue and payable in the prescribed manner in twenty equal annual instalments, ¹¹[* * *] :

Provided that the State Government may at any time pay the commuted value of the bond in one instalment.

^{10b} Substituted with retrospective effect for, "All sums payable" by West Bengal, Act XXXV of 1955.

¹¹ The words "subject to any deduction from such payment of any sum which the Collector may order to be made under section 7 or any *ad interim* payment made under section 12 or any other sum recoverable from such compensation under section 8 or under an order of attachment" were omitted with retrospective effect by West Bengal Act XXXV of 1955.

(3) Notwithstanding ¹[anything to the contrary contained in sub-section (2), where the compensation payable to an intermediary or other person is an annuity, *²[the collector of the district shall make the annual payment in respect of such annuity in the prescribed manner] to the trustee or other person ³[entitled for the time being to receive such payment].

Proviso—

*“Provided that having regard to the financial position and other circumstances of an intermediary referred to in clause (a) or clause (b) of the second proviso to sub-section (1) of section 17, the State Government may pay to such intermediary the commuted value of the annuity payable to him calculated in the prescribed manner, in one or more instalments.

24. Compensation due to persons incompetent to alienate.—If any intermediary entitled to receive such compensation in respect of any interest be a person incompetent to alienate such interest, the Compensation Officer shall keep the amount of compensation *⁴[after deducting therefrom amount recoverable under section 7] in deposit with the Collector of the district and such Collector shall arrange to invest the cash and the income from the bonds in the purchase of such Government or other approved securities as such Collector thinks fit and shall direct the payment of the income from such investment to the intermediary who would for the time being have been entitled to hold and enjoy such interest if it had not vested in the State and such bonds and securities shall remain so deposited until they are made over to any person or persons becoming absolutely entitled thereto :

Provided that nothing in this section shall affect the right of a ^{1a}[* * *] limited owner to receive the whole or any part of such compensation in circumstances where such ³[* * * *] limited owner would be entitled under the law to spend the corpus of the interest :

25. Certain restrictions as to amounts payable as compensation.—(1) ⁴[No intermediary] shall be entitled to receive on account of compensation any amount in excess of the amount calculated on his total net income from all his interest held by him within the State at the rate specified in the table contained in Section 17.

(2) The Compensation Officer shall before making any payment under Section 23 of any compensation payable in terms of a Compensation

¹ Substituted for the words “anything contained in sub-section (2), the entire amount of the compensation in respect of any interest or portion of any interest referred to under the proviso to sub-section (1) of section 17, shall be payable in perpetual annuity bonds” by W. Bengal Act IX of 1961.

² Substituted for the words “entitled to the management of such interest or the portion of such interest” by *ibid*.

³ Substituted by Act XXII of 1964 and shall be deemed to have always been substituted.

⁴ The words “Hindu widow or other” omitted by W. Bengal Act IX of 1961.

⁵ Substituted for the words “Notwithstanding anything contained elsewhere in this Act or in any Compensation Assessment Roll as finally published under section 21 but subject always to the provisions of Chapter IV, no intermediary” by W. Bengal, Act IX of 1961.

Assessment Roll ¹[ascertain from the intermediary in the prescribed manner if any amount has already been paid to him on account of compensation and, if so, shall, by order,] adjust the payment by making any deduction he considers necessary :

Provided that—

- (a) no such deduction shall be made until a reasonable notice has been given to the intermediary to appear and be heard in the matter ; and
- (b) any such order for deduction shall be subject to appeal in the manner provided under section 20.

²[(3) If any intermediary having estates and interests in an area or areas other than the one in respect of which his Compensation Assessment Roll has been prepared and published does not submit a statement under clause (b) of sub-section (1) of section 15 or does not include in such a statement filed by him full and correct details regarding all his estates and interests and the income therefrom, with a view to getting higher compensation than what is admissible under the provisions of sub-section (1), the State Government may, by order made in this behalf, direct that such intermediary shall forfeit the whole such part of the compensation payable to him as may be specified in the order.]

³[(3A) If an intermediary executes any instrument purporting to transfer any *Khas* land which he has not retained under sub-section (1) of Section 6 to any person and puts such person in possession of such land at any time before the payment of the compensation under Section 23 to him, then, without prejudice to its right to recover possession of such land from such person, the State Government may, by order made in this behalf, direct that such intermediary shall forfeit such part of the compensation payable to him as may be specified in the order.

(3B) An appeal against any order of forfeiture passed under sub-section (3A), if preferred within sixty days of such order, shall lie to a special Judge being a person who is or has been a District Judge or an Additional District Judge, appointed by the State Government for the purpose of hearing appeals under this sub-section and such special Judge shall dispose of the appeal according to the prescribed procedure.]

(4) If, in any case, it is found that the amount of compensation paid to an intermediary is in excess of what is payable to him under the provisions of this Act, the excess amount so paid shall be adjusted against future instalments, if any, so payable to him, and, if no such adjustment is possible, may be recovered from the intermediary as a public demand.

¹ Substituted for words "prepared for any notified area, ascertain from such intermediary in the prescribed manner if any amount has been paid to him on account of compensation in respect of any other notified area and" by *ibid*.

² Added by W. Bengal Act XVII of 1960.

³ Added by Act XXII of 1964.

26. **Extent of recovery of compensation money by attachment.**—(1) ¹[Save as otherwise provided in the proviso to sub-section (1) of section 7, no portion] of the compensation payable to any intermediary in term of any Compensation Assessment Roll finally published under Section 21, in excess of fifty *per centum* thereof shall—

- (a) be liable to be deducted under an order of a Collector made under section 7; or
- (b) be liable to attachment at any time in execution of decrees for arrears of rent.

(2) Where there are several orders of attachment and the aggregate of the sums to be attached under such order exceeds the limit referred to in sub-section (1), the orders shall be enforceable to the extent of such limit and priority amongst them shall be decided as far as practicable, in accordance with the principles laid down in section 73 of the Code of Civil Procedure, 1908 (Act V of 1908) :

Provided that any sum which is required to be deducted under the order of a Collector under section 7 shall have priority before any order of attachment.

²[(3) Except—

- (a) in a case covered by the proviso to sub-section (1) of section 7, or
- (b) when the entire amount of compensation is payable in cash

³[under clause (a) of sub-section (2) of section 23

all sums to be deducted under section 7 or recoverable under an order of attachment under sub-section (1) shall be deducted from the amount of compensation payable in non-negotiable bonds ⁴[or from the annuity payable under sub-section (3) of that section]⁴], and no such sum shall be deducted from the amounts payable under sub-section (1) or sub-section (2) of section 12.]

CHAPTER IV

MINES AND MINERALS

Notes :—This Chapter deals with mines and minerals. But the Act has not defined the terms “minerals” and “mining lease” which can be found in the Mines Act, 1952 (35 of 1952).

27. **Provision of Chapter IV to override other provisions of the Act.**—The provisions of this Chapter shall have effect notwithstanding anything to the contrary elsewhere in this Act.

Notes :—Lands comprising forests and also rights in *huts* and *bazars* not in the *khas* possession of the intermediary have been excluded from the operation of those sections. For the said amendment, see Secs. 28 and 29, *post*.

¹ Amended by W. B. Act XXII of 1964.

² Added with retrospective effect by W. B. Act XXXV of 1955.

³ Added by W. Bengal Act IX of 1961.

⁴ Inserted with retrospective effect by W. Bengal XXV of 1957.

28. Right of intermediaries directly working mines.—So much of the land ^{4a}[* * * *] in a notified areas held by an intermediary immediately before the date of vesting ^{4b}[(including sub-soil right therein, but excluding rights in *huts* and *bazars* not in the *khas* possession of the intermediary and lands comprising forests, if any)] as was comprised in or as appertained to any mine which was directly worked by him immediately before such date shall with effect from such date be deemed to have been leased by the State Government to such intermediary. The terms and conditions of such lease shall be as agreed upon between him and the State Government, or in default of agreement as may be settled by the Mines Tribunal :

Provided that all such terms and conditions shall be consistent with the provisions of any Central Act for the time being in force relating to the grant of mining leases.

Notes

The terms and conditions of a lease deemed to have been granted by the State Government under the provisions of this section, must be consistent with the provisions of any Central Act that may be in force for the time being relating to the grant of mining leases. The relevant Central Acts and Rules made under those Act are :—(1) the Oilfields (Registration and Development) Act 53 of 1948 ; (2) the Mines and Minerals (Regulation and Development) Act 67 of 1957 ; (3) the Petroleum and Natural Gas Rules, 1959 which superseded the Petroleum Concession Rules, 1949 ; and (4) the Mineral Concession Rules, 1949.

Sec. 4 of Act 53 of 1948 provides—

“(1) No mining lease shall be granted after the commencement of this Act otherwise than in accordance with the rules made under this Act.

(2) Any mining lease granted contrary to the provisions of sub-section (1) shall be void and of no effect.”

Section 4 of Act 67 runs thus—

“(1) No person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder :

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.”

(2) No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.”

^{4a} The words “(Including sub-soil rights therein)” omitted by W. Bengal Act IX of 1961,

^{4b} Added by *ibid*.

38. **Payment of compensation for mines.**—The provisions of sections 14, 15, 17, [**] 19, [**] 23, 24, 25 and 26 shall apply *mutatis mutandis* in regard to the procedure of preparation of Compensation Assessment Roll and the manner of payment of compensation for mines and minerals under this Chapter.

46. **Bar to jurisdiction of Civil Court in respect of certain matter.**—Where an order has been made under sub-section (1) of section 39 directing the preparation or revision of a record-of-rights, no Civil Court shall ¹[* * *] entertain any suit or application for the determination of rent or determination of the status of any tenant or the incidents of any tenancy to which the record-of-rights relates, and ²[if any suit or application, in which any, of the aforesaid matters is in issue, is pending] before a Civil Court ³[on the date of such order, it shall be stayed, and it shall, on the expiry of the period prescribed for an appeal under sub-section (3) of section 44 or when an appeal has been filed under that sub-section, as the case may be, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters.]

⁴[* * *]

Explanation.—In this section suit includes an appeal.

Notes

This section bars the jurisdiction of the Civil Court in three matters, namely, when the suit or application is for (1) the determination of rent, or (2) the determination of the status of a tenant, or (3) the determination of the incidents of a tenancy. If any suit or application for the decision of any of the above matters is pending before a Civil Court on the date of an order under sub-sec. (3) of Sec. 39, it must be stayed and it shall on, the expiry of the period prescribed for an appeal under sub-sec. (3) of Sec. 44 or when any appeal has been filed under that sub-section, on the disposal of such appeal, abate so far as it relates to any of the above matters.

But this section bars suits or applications for determination of any of the above three matters and does not bar suits or applications on other matters mentioned in Rule 26, (a). Sec. 46 should be confined to cases to which the section applies in its terms and it should not be extended beyond that limit (b).

¹ The words, "until after the final publication of the record-of-rights under sub-section (2) of section 44" were omitted with retrospective effect by W. Bengal Act XXV of 1957.

² Substituted with retrospective effect for the words "if any such suit or application is pending" by *ibid*.

³ Substituted with retrospective effect for the words "on the date of such order it shall be stayed", by *ibid*.

⁴ The proviso was omitted with retrospective effect by *ibid*.

(a) *Lala Ganguram v. Krishna Gopal*, 59 C. W. N. 1006.

(b) *Beni Madhab Ghose v. Anila Bala Ghose*, 61 C. W. N. 349.

A suit in which a question as to whether or not a person is a tenant is raised, that is, a title has to be determined, is not a suit for determination of the status of a tenant or the incidents of a tenancy. Sec. 46 is a bar only when in any such decision of the question or title of tenant etc., and any of the incidents of tenancy, rent or status of tenant is involved (c), *Monmotha v. Khayer Ali*, (P. N. Mukherjee & Amaresh Roy J. J.) who distinguished *Lala Ganguram v. Krishna Gopal*, and followed *Dhirendra v. Sushil* and overruled the decisions given in *Sripati v. Narendra*, and *Sudhir Chandra v. Chota Gobindao*, Laik J. held in *Jnanendra Mulik v. Sushilendra Palit*, (d), that the bar in Sec. 46 is applicable only for the period up to final publication of record-of-rights but after final publication a suit is maintainable challenging the correctness of entries in record-of-rights. Sections-18 and 21 do not oust the jurisdiction of Civil Court in regard to above matters.

CHAPTER VI.

¹[ACQUISITION OF INTERESTS OF RAIYATS AND UNDER-RAIYATS.]

²[49. When this Chapter is to come into force.—The provisions of this Chapter shall come into force on such date and in such district or part of a district as the State Government may, by notification in the *Official Gazette*, appoint and for this purpose different dates may be appointed for different districts or parts of districts.]

Notes :—Chapter VI now contains two sections, namely, Sec. 46 and sec. 52, the intermediate two sections, namely, sec. 50 and sec. 51 having been repealed by Act XXXV of 1955. Sec. 52 enacts a deeming provision, namely, raiyats and under-raiyats will be deemed intermediaries under circumstances specified in the section. The use of the expression “with such modifications as may be necessary” in Sec. 52 has not the effect of making the provisions of Chapter VI vague and uncertain and as such invalid, as deeming provisions of law are usually made in this fashion [*Surendra Nath Jana, v. State of West Bengal* 62 C. W. N. 14, at p. 25].

³[52. Application of Chapters II, III, V, and VI to raiyats and under-raiyats.—On the issue of a notification under Section 41 the provisions of Chapter II, III, V and VII shall, with such modifications as may be necessary, apply *mutatis mutandis* to raiyats and under-raiyats as if such raiyats and under-raiyats were intermediaries and the land held by them

(c) *Monmotha v. Khayer Ali*, 66 C. W. N. 121 (124) ; *Lala Gangaram v. Krishna Gopal*, 59 C. W. N. 1006 ; *Dhirendra v. Sushil*, 63 C. W. N. 521 ; *Sripati v. Narendra*, 60 C. W. N. 1070 ; *Sudhir Chanra v. Chota Gobinda*, 63 C. W. N. 818 ; *Jnanendra Mallik v. Sushilendra Palit*, 69 C. W. N. 210.

¹ Substituted with retrospective effect for original heading, viz., “Acquisition of certain *khas* lands and rent-receiving interests.” by West Bengal Act XXXV of 1955.

² Substituted with retrospective effect for original sec. 49 by *ibid*.

³ Substituted with retrospective effect for former section 52 by W. Bengal Act XXXV of 1955.

were estates and a person holding under a *raiyat* or an *under-raiyat* were a *raiyats* for the purposes of clauses (c) and (d) of section 5].

¹[Provided that, where a *raiyat* or an *under-raiyat* retains, under section 6 read with this section, any land comprised in a holding, then notwithstanding anything to the contrary contained in sub-section (2) of section 6, he shall pay,—

(a) in case where he was paying rent for the lands comprised in the holding and held by him immediately before the date of vesting (hereafter in this proviso referred to as the holding lands),—

(i) if he retains all the holding lands, the same rent as he was paying therefor immediately before the date of vesting, and

(ii) if the land retained by him forms part of the holding lands, such rent as bears the same proportion to the rent which he was paying for the holding lands immediately before the date of vesting as the area of the land retained by him bears to the area of all the holding lands ;

(b) in case where he was liable to pay rent but was not paying any rent for the holding lands immediately before the date of vesting on the ground that the rent payable by him therefor was not assessed, such rent as may be assessed, *mutatis mutandis* in accordance with the provisions of section 42.]

¹[(c) in cases when he was liable to pay rent wholly in kind or partly in kind and partly in cash, then, notwithstanding anything contained in clause (e) of section 5, such rent as may be assessed in accordance with the provisions of section 40, and]

²[(d) in cases where he was liable immediately before the date of vesting to pay for the holding lands a variable cash rent periodically assessed, such rent as may be assessed, *mutatis mutandis*, in accordance with the provisions of Section 42.]

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¹Added by W. Bengal Act XXII of 1963.

²Added by W. Bengal Act XXII of 1964.

West Bengal (15)

WEST BENGAL ACT XVI OF 1969

THE WEST BENGAL UTILISATION OF LAND FOR
PRODUCTION OF FOOD CROPS ACT, 1969

[Passed by the West Bengal Legislature]

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 11th August, 1969.]

An Act to provide for the requisitioning of land with a view to better utilisation thereof for the production of food crops for meeting the shortage of food grains in West Bengal.

WHEREAS it is expedient to provide for the requisitioning of land with a view to better utilisation thereof for the production of food crops for meeting the shortage of food grains in West Bengal.

It is hereby enacted in the Twentieth Year of the Republic of India, by the Legislature of West Bengal, as follows :—

1. **Short title and extent** :—(1) This Act may be called the West Bengal Utilisation of Land for Production of Food Crops Act, 1969.

(2) It extends to the whole of West Bengal.

2. **Definitions** :—In this Act, unless there is anything repugnant in the subject or context,—

(a) “agricultural year” means the Bengali year commencing on the first day of *Baisakh* ;

(b) “Collector” means the Collector of a district and includes an Additional District Magistrate, and a Sub-divisional Magistrate empowered by the State Government to discharge any of the functions of a Collector under this Act ;

(c) “prescribed” means prescribed by rules made under this Act.

3. **Power to requisition** :—(1) The Collector may, by order in writing, requisition any land if he is of opinion that such land is suitable for the production of food crops and is not likely to be utilised during the current or the ensuing agricultural season :

Provided that no land which forms part of any homestead or cremation or burial ground or of any place of worship shall be requisitioned under this section.

(2) Such requisition shall be made for such period, not extending beyond the agricultural year in which the order under sub-section (1) is made, as may be specified in the order.

(3) An order under sub-section (1) shall specify the date on which the possession of such land shall be delivered to the Collector.

(4) An order issued under sub-section (1) shall be served in such manner as may be prescribed upon the owner of the land and where the order relates

to land in occupation of an occupier, not being the owner of the land, also on such occupier.

4. Delivery of possession :—When an order for the requisition of any land is made under section 3, the person in possession of such land shall deliver possession thereof to the Collector or to any officer authorised by the Collector in this behalf on the date specified in the order and in default of his doing so, the Collector may take possession thereof by force, if necessary.

5. Utilisation of land :—(1) As soon as may be after the Collector is in possession of any land requisitioned under section 3, he shall, by order in writing, make over possession thereof for such period not extending beyond the current agricultural year as he thinks fit to any person for utilising such land for the production of such food crop as may be specified in the order.

(2) In making over possession of any land under sub-section (1), the Collector shall whenever possible give preference to persons who own no land or less than .8094 hectare of land and who are residents of the locality where such land is situated and who intend to bring such land under personal cultivation.

(3) Any person to whom possession of any land has been made over under sub-section (1) shall be entitled to do in, on or with respect to, such land all things necessary for utilisation of such land for the production of such food crops as may be specified in the order issued under the said sub-section.

(4) Nothing in this section shall be deemed to confer on any person to whom possession has been made over under sub-section (1) the status of a tenant or to confer on him any transferable right.

6. Delivery of produce of its money value to the Collector :—(1) Any person to whom possession of any land has been made over under sub-section (1) of section 5 or who has been allowed to continue to remain in possession of such land under clause (a) of section 10 shall,—

(a) deliver to the Collector or to any officer authorised by the Collector in this behalf thirty-five *per cent.* of the gross produce from such land for any agricultural season or pay its money value to be determined by the Collector in such manner as may be prescribed, and

(b) after the expiry of the period for which possession has been made over to him under sub-section (1) of section 5 or he has been allowed to continue to remain in possession under clause (a) of section 10, give back possession of such land to the Collector or to any officer authorised by the Collector in this behalf and in default of his doing so the Collector may take possession thereof by force, if necessary.

(2) If such person fails to deliver the produce or the money value thereof referred to in clause (a) of sub-section (1) within such time as may be fixed by the Collector in this behalf, the money value shall be recoverable as a public demand.

7. Compensation :—When any land is requisitioned under section 3, there shall be paid to every person interested compensation for such requisition and the amount of compensation shall be twenty-five *per cent.*, of the gross

produce from such land for the period for which such land has been requisitioned, or its money value determined under section 6 :

Provided that if there is a total failure of crop from such land or if for any reason such land has not actually been utilised, the amount of compensation *per annum* shall be at the rate of three *per cent.* of the market value of such land on the date of the order of requisition.

Explanation.—The expression “person interested” includes all persons claiming an interest in compensation to be paid on account of the requisition of land under the provisions of this Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

8. Apportionment of compensation :—Where there are several persons interested in the land requisitioned under section 3, the Collector shall by order apportion the compensation among such persons in accordance with the nature and extent of interest held by each such person.

9. Release from requisition or extension of the period of requisition :—After the expiry of the period for which land has been requisitioned under section 3, the Collector may,—

- (a) release the land from requisition and deliver possession thereof to the person from whom possession was taken, or
- (b) if he is of opinion that such requisition should continue, by order in writing, extend the period of requisition for such period not extending beyond one agricultural year at a time, as he thinks fit, so, however, that the total period of requisition shall not exceed three agricultural years :

Provided that no order extending the period of requisition of any land shall be made without giving the owner, and if such land is in occupation of an occupier, also the occupier, an opportunity of being heard :

Provided further that the order for the extension of the period of requisition shall be made before the expiry of the period of requisition.

10. Possession in case of extension of the period of requisition :—If the period of requisition is extended under clause (b) of section 9, the Collector may,—

- (a) by order allow the person to whom possession has been delivered under sub-section (1) of section 5 to continue to remain in possession for such period not extending beyond the agricultural year as may be specified in the order ; or
- (b) proceed under section 5 and make over possession of the land to another person.

11. Appeal :—An appeal shall lie from an order made under this Act,—

- (a) to the Collector of the district, where the order is made by a Sub-divisional Magistrate, and
- (b) to the Commissioner of the Division, where the order is made by a Collector of a district or an Additional District Magistrate,

if preferred within thirty days from the date of the order appealed against and the decision of the Collector or of the Commissioner, as the case may be, shall be final.

12. Power to make rules :—(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the manner of service of the order referred to in sub-section (4) of section 3 ;
- (b) the manner of determining gross produce from any land ;
- (c) the manner of determining money value of the gross produce from any land.

13. Repeal and savings :—(1) The West Bengal Utilisation of Land for Production of Food Crops Ordinance, 1969, is hereby repealed.

(2) Anything done or any action taken under the West Bengal Utilisation of Land for Production of Food Crops Ordinance, 1969, shall be deemed to have been validly done or taken under this Act as if this Act had commenced on the 3rd day of June, 1969.

West Bengal (16)

THE WEST BENGAL ACQUISITION AND SETTLEMENT OF HOMESTEAD LAND ACT XV OF 1969

(Published in the *Calcutta Gazette, Extraordinary*, dated 11th August, 1969).

Whereas it is expedient to provide for the acquisition of land on which homestead has been constructed and settlement of such land with the person in possession thereof.

It is hereby enacted in Twentieth year of Republic of India by the Legislature of West Bengal as follows :

1. Short title and extent :—This Act may be called the West Bengal Acquisition and Settlement of Homestead Land Act 1969.

(2) It extends to the whole of West Bengal, except the areas to which the provisions of the Calcutta Municipal Act, 1951, (West Bengal Act XXXIII of 1951), the Howrah Municipal Act, (West Bengal Act XVII of 1965), the Bengal Municipal Act 1932 (Bengal Act XV of 1932), the Cooch Behar Town Committee Act, 1903 (Cooch Behar Act IV of 1903), the Cooch Behar Municipal Act, 1944, (Cooch Behar Act III of 1944), the Chandernagore Municipal Act, 1955, (West Bengal Act XVIII of 1955) and the Cantonments Act, 1924 (II of 1924) apply.

2. Definitions :—In this Act, unless there is anything repugnant in the subject or context,—

- (a) “agricultural land” means land ordinarily used for purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying fallow for the time being ;
- (b) “Collector” means the Collector of a district and includes an Additional District Magistrate or any other officer appointed by the State Government to discharge any of the functions of a Collector under this Act ;

- (c) "holding" means that land or lands held by a *raiyat* and treated as a unit for assessment of revenue ;
- (d) "homestead" has the same meaning as in the West Bengal Estates Acquisition Act, 1953 (1. of 1954) ;
- (e) "land" includes both agricultural land and non-agricultural land ;
- (f) "non-agricultural land" means land other than agricultural land or other than land comprised in a forest ;
- (g) "non-agricultural tenant" means a non-agricultural tenant as defined in the West Bengal Non-Agricultural Tenancy Act, 1949 (XX of 1949) ;
- (h) "occupier" means a person who is in possession of any land of another person without any interest therein based on title and who holds no land or not more than .8094 hectare of land either as owner or tenant thereof and includes the heirs of such person ;
- (i) "prescribed" means prescribed by rules made under this Act ;
- (j) "*raiyat*" means a person who holds land for purposes of agriculture.

3. **Act not to apply to certain lands :—**Nothing in this Act shall apply to any land—

- (a) belonging to, or taken on lease or requisitioned by Government ;
- (b) belonging to, or taken on lease by, any local authority.

4. **Application to the Collector :—**Where an occupier has constructed a homestead on the land in his possession and has been residing therein continuously for a period of not less than three years immediately before the date of coming into force of this Act, he may, within two years from such date, make an application, in such manner and containing such particulars as may be prescribed, to the Collector having jurisdiction—

- (a) if the land in his possession does not exceed .0334 hectare, for settling the land with him ; and
- (b) if the land in his possession exceeds .0334 hectare, for settling .0334 hectare of such land with him on which his homestead has been constructed.

5. **Inquiry by the Collector :—**(1) On receipt of an application under section 4 the Collector shall make an inquiry in such manner as may be prescribed to determine whether an occupier has constructed a homestead on the land in his possession and has been residing therein continuously for the period referred to in section 4.

(2) Notwithstanding anything contained in section 4, the Collector may, on his own motion, make any inquiry referred to in sub-section (1).

Provided that no such inquiry shall be started after the expiry of two years from the date of coming into force of this Act.

(3) For the purpose of an inquiry under sub-section (1) the Collector shall have all the powers of a civil court while trying a suit in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of documents ;
- (c) receiving evidence on affidavits ;

6. Demarcation of the land :—If the Collector is satisfied on an inquiry under section 5 that an occupier has constructed a homestead on the land in his possession and has been residing therein continuously for the period referred to in section 4, he shall make an order for demarcating such land or where such land exceeds .0334 hectare, for demarcating .0334 hectare of such land on which the homestead has been constructed.

7. Acquisition of land by the Collector :—(1) After demarcation of the land under section 6 the Collector shall, by publishing in the *Official Gazette* and in such other manner as may be prescribed a notice in this behalf, acquire the land so demarcated with effect from such date as may be specified in the notice.

(2) When a notice is published under sub-section (1) in respect of any land such land shall, with effect from the date specified in the notice, vest absolutely in the State Government free from all encumbrances.

8. Compensation :—When any land is acquired under section 7 there shall be paid compensation for such acquisition to every person interested and the amount of compensation shall be equivalent to twenty times of the annual revenue or rent, as the case may be, of such land to be determined by the Collector in the prescribed manner for the purpose of such compensation.

Explanation.—The expression “person interested” includes all persons claiming an interest in compensation to be paid on account of the acquisition of land under the provisions of this Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

9. Apportionment of compensation :—Where there are several persons interested in the land acquired under section 7, the Collector shall by order apportion the compensation among such persons in accordance with the nature and extent of interest held by each such person.

10. Occupier not liable to be evicted :—(1) An occupier shall not be liable to be evicted or dispossessed from the land demarcated under section 6, notwithstanding any judgement, decree or order of any court for such eviction or dispossession.

(2) In any suit or proceeding in any court for the eviction of an occupier from the land in his possession, including any such suit or proceeding pending on the date of coming into force of this Act the occupier may—

(a) if he has made an application under section 4, file a petition to the court supported by a certificate from the Collector to the effect that he has done so ;

(b) if an inquiry has been started by the Collector on his own motion under sub-section (2) of section 5, file a petition to the court supported by a certificate from the Collector to the effect that the Collector has started the inquiry ;

(c) if he has not made an application under section 4 and if no inquiry has been started by the Collector on his own motion under sub-section (2) of section 5, file a petition to the court stating that he intends to make an application under section 4.

(3) On receipt of a petition under sub-section (2), the court shall,—

(a) if the occupier has made an application under section 4, stay the suit or the proceeding till the disposal of the application ;

(b) if an inquiry has been started by the Collector on his own motion under sub-section (2) of section 5, stay the suit or the proceeding till the inquiry is made ;

(c) if the occupier has not made an application under section 4 and if no inquiry has been started by the Collector on his own motion under sub-section (2) of section 5, direct the occupier to file a certificate from the Collector within a period of three months or within such further period as the court may grant stating that an application under section 4 has been made and on the filing of such certificate stay the suit or the proceeding till the disposal of the application by the Collector.

(4) The certificate referred to in clauses (a) and (b) of sub-section (2) shall, on application by an occupier be issued by the Collector in such manner as may be prescribed.

11. Settlement of land and status of occupier :—(1) When land is acquired under section 7, the Collector shall settle it with the occupier who has made the application under section 4.

(2) The occupier to whom any land is settled under sub-section (1) shall have the status—

(i) of a *raiyat*, if such land is agricultural land, or

(ii) of a non-agricultural tenant, if such land is non-agricultural land :

Provided that such occupier shall not be liable to pay any revenue or rent for such land.

12. Abatement of revenue or rent :—Any person whose land has been acquired under the provisions of section 7 shall be entitled—

(a) if the land is included in any holding, to have the revenue payable by him abated by such amount as bears the same proportion to such revenue as the area of the land acquired bears to the area of such holding, and

(b) if the land is included in any non-agricultural tenancy, to have the rent payable by him abated by such amount as bears the same proportion to such rent as the area of the land acquired bears to the area of such tenancy.

13. Appeal :—An appeal shall lie from an order under this Act,—

(a) to the Collector of the district, where the order is made by an Officer below the rank of an Additional District Magistrate, and

(b) to the Commissioner of the Division, where the order is made by the Collector of a district or an Additional District Magistrate, if preferred within thirty days from the date of the order appealed against and the decision of the Collector or of the Commissioner, as the case may be, shall be final.

14. Act to override other laws :—The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law or in any contract express or implied in any instrument and notwithstanding any usage or custom to the contrary.

15. Power to make rules :—(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the form and manner of making application under section 4 ;
- (b) the manner of making inquiry under sub-section (1) of section 5 ;
- (c) the manner of publishing a notice under sub-section (1) of section 7 ;
- (d) the manner of determining revenue or rent under section 8 ;
- (e) the manner of issuing a certificate referred to in section 10 ;
- (f) any other matter which has to be, or may be prescribed.

16. Repeal and Savings :—(1) The West Bengal Acquisition and Settlement of Homestead Land Ordinance 1969 (West Bengal Ord. VII of 1969) is hereby repealed.

(2) Anything done or any action taken under the West Bengal Acquisition and Settlement of Homestead Land Ordinance, 1969, shall be deemed to have been validly done or taken under this Act as if this Act had commenced on the 22nd day of May, 1969.

West Bengal (17)

THE WEST BENGAL REQUISITIONED LAND (CONTINUANCE OF POWERS) ACT NO. VIII OF 1951

(Assent of the President was published in the *Calcutta Gazette Extra-Ordinary*, dated 29-3-1951),

An Act to provide for the continuance of certain emergency powers in relation to requisitioned land.

WHEREAS it is expedient to provide, in relation to land which, when the Defence of India Act, 1939 (XXXV of 1939), expired, was subject to any requisition effected under rules made under that Act, for the continuance of certain powers theretofore exercisable under the said Act or the said rules and thereafter exercisable under the Requisitioned Land (Continuance of Powers) Ordinance, 1946 (Ord. XIX of 1946) or the Requisitioned Land (Continuance of Powers) Act 1947 (XVII of 1947).

It is hereby enacted as follows :—

1. Short title, extent, commencement and duration :—(1) This Act may be called the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the first day of April, 1951, and shall cease to have effect on the expiration of a period of three years from that date except as respect things done or omitted to be done before the expiration of such period and section 8 of the Bengal General Clauses Act, 1899 (Bengal Act I of 1899), shall apply upon the expiry of this Act as if it had then been repealed by a West Bengal Act.

2. Definitions :—In this Act, unless there is anything repugnant in the subject or context—

- (1) "the Act" means the Requisitioned Land (Continuance of Powers), Act 1947.
- (2) "the Ordinance" means the Requisitioned Land (Continuance of Powers) Ordinance, 1946.
- (3) "requisitioned land" means immovable property which, at the commencement of this Act, is subject to any requisition effected under the rules made under the Defence of India Act, 1939 (XXXV of 1939) and continued under the Ordinance and the Act and is held under requisition for any purpose other than the purposes of the Union.

3. Continuance of Requisitions :—Notwithstanding the expiration of the Defence of India Act, 1939, and the rules made thereunder and the repeal of the Ordinance and the expiration of the period of operation of the Act in respect of the requisitioned lands, all requisitioned lands shall continue to be subject to requisition until the expiry of this Act and the State Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient.

Provided that the State Government may at any time release from requisition any requisitioned land.

4. Release from Requisition :—(1) Where any requisitioned land is to be released from requisition, the State Government may, after making such enquiry, if any, as it considers necessary, specify by order in writing the person to whom possession of the land shall be given.

(2) The delivery of possession of the requisitioned land to the person specified in an order made under sub-section (1) shall be a full discharge of the State Government from all liability in respect of such delivery, but shall not prejudice any right in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of land is so delivered.

(3) Where the person to whom possession of any requisitioned land is to be given can not be found and has no agent or other person empowered to accept delivery on his behalf, the State Government shall cause a notice declaring that the land is released from requisition to be affixed on some conspicuous part of the land and publish the notice in *Official Gazette*.

(4) Where a notice referred to in sub-section (3) is published in the *Official Gazette*, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and to have been delivered to the person entitled to possession thereof; and the State Government shall not be liable for any compensation or other claim in respect of the land for any period after the said date.

5. Power to acquire requisitioned land :—(1) Subject to the provisions of sub-section (3), the State Government may, at any time when requisitioned land continues to be subject to requisition under section 3, acquire such land by publishing in the *Official Gazette* a notice to the effect that such Government has decided to acquire such land in pursuance of this section.

(2) When a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of acquisition of such land shall end.

(3) No requisitioned land shall be acquired under this section except in the following circumstances, namely :—

(a) where any works have during the period of requisition been constructed on, in or over the land wholly or partly at the expense of Government and the State Government decides that the value of, or the right to use, such works should be preserved or secured for the purposes of the State Government ; or

(b) where the cost of restoring the land to its condition at the time of its requisition would, in the determination of the State Government be excessive having regard to the value of the land at that time.

(4) Any decision or determination of the State Government under sub-section (3) shall be final, and shall not be called in question in any Court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvements of every description.

6. Payment of compensation :—(1) In respect of the continued subjection of requisitioned land to requisition under this Act or the Ordinance, compensation shall be determined and paid in accordance with the provisions of section 19 of the Defence of India Act, 1939 (XXXV of 1939) and the rules made thereunder ;

Provided that all agreements and awards under the said section in respect of the payment of compensation for the period of requisition before the first day of April 1951, shall continue to be in force and shall apply to the payment of compensation for the period of requisition after that date.

(2) In respect of the acquisition under this Act or the Ordinance of any requisitioned land, the amount of compensation payable shall be such sum as would be sufficient to purchase at the market rate prevailing on the date of the notice under section 5 a piece of land equal in area to, and situated within a distance of three miles from, the acquired land, and suitable for the same use as that to which the acquired land was being put immediately before the date of its requisition, or a sum equivalent to twice the market value of the acquired land on the date of its requisition, whichever is less, and such amount shall be determined and paid in accordance with the procedure set out in the aforesaid section 19 and the rules made thereunder.

(3) For the purposes of sub-section (1) all the provisions of the said section 19 and of the rules made thereunder, and for the purpose of sub-section (2), such of those provisions as relate to matters of procedure shall be deemed to be continuing in force.

7. Power to obtain information :—(1) The State Government with a view to carrying out the purposes of sections 3 to 6, by order require any person to furnish to such authority as may be specified in the order such information in his possession relating to any requisitioned land as may be specified.

(2) Every person required to furnish such information as is referred to in sub-section (1) shall be deemed to be legally bound to do so within

the meaning of sections 176 and 177 of the Indian Penal Code (XLV of 1860).

8. Delegation of functions :—The State Government may, by order notified in the *Official Gazette* direct that any power conferred or any duty imposed on it by this Act shall in such circumstances and under such conditions, if any, as may be specified in the directions be exercised or discharged by such officer as may be so specified.

9. Protection of action taken under the Act :—No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

10. Savings :—On and from the first day of April 1951, anything done or deemed to have been done in exercise of any power conferred by or under the Act shall be deemed to have been done in exercise of powers conferred by or under this Act, as if this Act had been in force when such thing was done.

West Bengal (18)

THE WEST BENGAL REQUISITIONED LAND (CONTINUANCE OF POWERS) (AMENDMENT) ACT V OF 1966

(Assent of the President was published in *Calcutta Gazette, Extraordinary* dated 9-3-66).

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2. Amendment of Section 1 of West Bengal Act VIII of 1951 :—In subsection (3) of section I of West Bengal Requisitioned Land (Continuance of Powers) Act 1951, for the words "fifteen years", the words "eighteen years" shall be substituted.

West Bengal (19)

THE WEST BENGAL REQUISITIONED LAND (CONTINUANCE OF POWERS) (AMENDMENT) ACT IV OF 1969

(President's assent obtained and published in *Calcutta Gazette, Extraordinary*, dated 31-3-1969).

2. Amendment of Section 1 of West Bengal Act VIII of 1951 :—In subsection (3) of section I of the West Bengal Requisitioned Land (Continuance of Powers) Act 1951 (hereinafter referred to as the said Act), for the words "eighteen years" the words "twenty one years" shall be substituted.

West Bengal (19A)

WEST BENGAL ACT VI OF 1972

THE WEST BENGAL REQUISITIONED LAND (CONTINUANCE OF POWERS) (AMENDMENT) ACT, 1972

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 4th May, 1972].

An Act to amend the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951.

WHEREAS it is expedient to amend the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951, for the purpose and in the manner hereinafter appearing ;

It is hereby enacted in the Twenty-third Year of the Republic of India, by the Legislature of West Bengal, as follows :—

1. **Short title** :—This Act may be called the West Bengal Requisitioned Land (Continuance of Powers) (Amendment) Act, 1972.

2. **Amendment of section I of West Bengal Act VIII of 1951** :—In sub-section (3) of section 1 of the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951 (hereinafter referred to as the said Act), for the words “twenty one years”, the words “twenty-three years” shall be substituted.

3. **Repeal and savings** :—(1) The West Bengal Requisitioned Land (Continuance of Powers) (Amendment) Ordinance, 1972, is hereby repealed.

(2) Anything done or any action taken under the said Act, as amended by the West Bengal Requisitioned Land (Continuance of Powers) (Amendment) Ordinance, 1972, shall be deemed to have been validly done or taken under the said Act as amended by this Act as if this Act had commenced on the 23rd day of March, 1972.

3. **Amendment of Section 6** :—For clause (i) of sub-section (2) of section 6 of the Act, the following clause shall be substituted namely :—

“(i) In respect of the acquisition under this Act of any requisitioned land, the amount of compensation payable shall be the price which the requisitioned land would have fetched in the open market, if it had remained in the same condition as it was at the time of acquisition and had been sold on the date of acquisition.”

West Bengal (20)

THE WEST BENGAL PREMISES REQUISITION AND CONTROL (TEMPORARY PROVISIONS) (AMENDMENT) ACT NO. V OF 1969

[President's assent obtained and published in the *Calcutta Gazette, Extraordinary*, dated 31-3-69].

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2. **Amendment of Section I of West Bengal Act V of 1947** :—In sub-section (4) of section 1 of West Bengal Premises Requisition and Control

(Temporary Provisions) Act, 1947, for the words and figures "the 31st day of March, 1969" the words and figures "31st day of March, 1974" shall be substituted.

West Bengal (21)

**THE LAND ACQUISITION (WEST BENGAL AMENDMENT)
ACT NO. 30 OF 1963**

(Received assent of the President and was published in the *Calcutta Gazette, Extraordinary*, dated 19-10-1963).

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[Sections 3 and 23 of Act I of 1894 as amended are already inserted in the treatise. See Part III, Chapter XVII, West Bengal (1)].

West Bengal (22)

**THE LAND ACQUISITION (WEST BENGAL AMENDMENT)
ACT NO. 24 OF 1964**

(Assent of the President was published in *Calcutta Gazette, Extraordinary*, dated 26-11-1964).

* * * * *

3. Inscetion of new Section 32-A in Act 1 of 1894—
[Sec Part III, Chapter XV, West Bengal (1).
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PART IV

Rules framed under Section 55 L. A. Act Consequent on the Amendment by Act 31 of-1962 by the Central Government

CHAPTER I

LAND ACQUISITION (COMPANIES) RULES, 1963

In exercise of the powers conferred by Sn. 55 of the Land Acquisition Act 1894 (1 of 1894), the Central Government hereby makes the following rules for the guidance of the State Governments and the Officers of the Central Governments and of the State Governments, namely :—

1. Short title and application :—(1) These rules may be called the Land Acquisition (Companies) Rules, 1963.

(2) These rules shall apply to acquisition of land for all companies under Part VII of the Act.

2. Definitions :—In these rules,—

(i) “Act” means the Land Acquisition Act, 1894 (1 of 1894) ; and

(ii) “Committee” means the Land Acquisition Committee constituted under Rule 3.

3. Land Acquisition Committee :—(1) for the purpose of advising the appropriate Government in relation to acquisition of land under Part VII of the Act the Appropriate Government shall, by notification in the Official Gazette, constitute a Committee to be called the Land Acquisition Committee.

(2) The Committee shall consist of—

(i) the Secretaries to the Government of the Departments of Revenue, Agriculture and Industries or such other officers of each of the said Departments as the Appropriate Government may appoint ; and

(ii) such other members as the Appropriate Government may appoint, for such term as that Government may, by order, specify.

(3) the Appropriate Government shall appoint one of the members of the Committee to be its Chairman.

(4) The Committee shall regulate its own procedure.

(5) It shall be duty of the Committee to advise the appropriate Government on all matters relating to or arising out of acquisition of land under Part VII of the Act, on which it is consulted and to tender its advise within one month from the date on which it is consulted.

Provided that the appropriate Government may on a request being made in this behalf by the Committee and for sufficient reasons extend the said period to a further period not exceeding two months.

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings :—

(1) Whenever a Company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the collector to submit a report to it on the following matters, namely :—

- (i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition ;
- (ii) that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed ;
- (iii) that the land proposed to be acquired is suitable for the purpose ;
- (iv) that the area of land proposed to be acquired is not excessive ;
- (v) that the company is in a position to utilise the land expeditiously ; and
- (vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall :—

- (i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land ;
- (ii) determine, having regard to the provisions of sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the company ; and
- (iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation.—For the purpose of this rule “good agricultural land” means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government under section 6 of the Act unless—

- (i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any submitted under section 5A of the Act ; and
- (ii) the agreement under section 41 of the Act has been executed by the company.

5. Matters to be provided in the agreement under section 41 :—(1) The terms of the agreement referred to in section 41 of the Act shall include the following matters, namely :—

- (i) that the company shall not except with the previous sanction of the appropriate Government, use the land for any purpose other than that for which it is acquired ;
- (ii) that the time within which the dwelling houses or amenities directly connected therewith shall be erected or provided or the building or work shall be constructed or executed shall not exceed three years from the date of transfer of the land to the company.
- (iii) that where the appropriate Government is satisfied after such enquiry as it may deem necessary that the company was prevented by reasons beyond its control from erecting, providing, constructing or executing dwelling houses or amenities or any building or work within the time specified in the agreement, the appropriate Government may extend the time for that purpose by a period not exceeding one year at a time so however that the total period of extension shall not exceed three years ;
- (iv) that if the company commits a breach of any of the conditions provided for in the agreement, the appropriate Government may make an order declaring the transfer of the land to the company as null and void whereupon the land shall revert back to the appropriate Government and directing that an amount not exceeding one fourth of the amount paid by the company to the appropriate Government as the cost of acquisition under clause (1) of section 41 of the Act shall be forfeited to the appropriate Government as damages and the balance shall be refunded to the company, and the order so made shall be final and binding ;
- (v) that if the company utilises only a portion of the land for the purpose for which it was required and the appropriate Government is satisfied that the company can continue to utilise the portion of the land used by it even if the unutilised part thereof is resumed, the appropriate Government may make an order declaring the transfer of the land with respect to the unutilised portion thereof as null and void whereupon such unutilised portion shall revert back to the appropriate Government and directing that an amount not exceeding one-fourth of such portion of the amount paid by the company as cost of acquisition under clause (1) of section 41 of the Act as is relatable to the unutilised portion shall be forfeited to the appropriate Government as damages and that balance of that portion shall be refunded to the company and the order so made shall, subject to the provisions of cl. (vi), be final and binding ;
- (vi) that where there is any dispute with regard to the amount relatable to the unutilised portion of the land, such dispute shall be referred to the court within whose jurisdiction the land or any part thereof is situated and the decision of that Court thereon shall be final.

(2) Where the company commits a breach of any of the terms of the agreement, the appropriate Government shall not make an order under clause (iv) or clause (v) of sub-rule (1), unless the company has been given an opportunity of being heard in the matter.

(3) The appropriate Government shall consult the committee before according any sanction under clause (i) of sub-rule (1) or extending the time under clause (iii) or making any order under clause (iv) or clause (v) of that sub-rule.

6. Additional matters which may be provided in the Agreement under section 41 :—(1) Without prejudice to the provisions of rule 5, the terms of agreement referred to in section 41 of the Act may also include the following matters, namely :—

that, in any case of urgency where possession of any land is proposed to be taken under section 17 before an award has been made under section 11 of the Act, the company shall deposit with the Collector, free of interest, such amount [being not more than two-thirds of the approximate amount of compensation payable in respect of the land as determined under clause (ii) of sub-rule (2) of rule 4], and within such time as the Collector thinks fit, to specify in this behalf.

(2) Where any amount has been deposited with the Collector under sub-rule (1), the Collector shall tender payment of the amount so deposited to the persons interested who in the opinion of the Collector, are entitled to receive payment of compensation under sub-section (1) of section 31 of the Act and shall pay it to them, unless prevented by some one or more of the contingencies mentioned in sub-section (2) of section 31 of the Act, subject to the following conditions, namely :—

- (i) the execution of an agreement by each recipient that the amount received by him exceeds the amount of the compensation finally awarded, the excess amount shall be recoverable from him as an arrears of land revenue and that he shall not claim any interest under the provisions of the Act in respect of the amount received by him under this sub-rule ; and
- (ii) the execution of a bond by each recipient with or without security as the Collector may decide undertaking to indemnify the appropriate Government against any claim for compensation or part thereof by any other person.

(3) If the amount deposited by the company under sub-rule (1) or any part thereof is not paid under sub-rule (2) the Collector shall, as soon as practicable, refund the same to the company.

7. Submission of periodical report :—For the purpose of ensuring that the conditions provided for in the agreement executed by the company are complied with the appropriate Government may direct the collector or such other officer as that Government may appoint for the purpose, to submit to it and to the Committee, a periodical report, at such intervals of time as it may specify, indicating the conditions which have been or have not been complied with as well as the steps taken by the company towards their compliance.

8. Conditions under which sanction may be given for transfer of land :—

Where a Company for which land has been acquired under the Act applies for the previous sanction of the appropriate Government for the transfer of that land or any part thereof by sale, gift, lease or otherwise, no such sanction shall be given unless—

- (i) the proposed transfer of land along with dwelling houses, amenities, buildings or work, if any, is to some other company or where the company is a Co-operative Society, such transfer is to any or all of its members, or
- (ii) Where the land has been acquired solely for the erection of the dwelling houses for workmen employed by the Company, the proposed transfer of the land along with dwelling houses, if any, is to such workmen or their dependent heirs ;

Provided that before giving any such sanction the appropriate Government shall consult the Committee.

9. Special provision in relation to certain Companies :—(1) When an application is made to the appropriate Government for acquisition of any land by a company, other than a company owned or controlled by the Central Government or any State Government, such acquisition shall ordinarily be made in accordance with the provisions of Part VII of the Act.

(2) Where the land is proposed to be acquired for a company, other than a company owned or controlled by the Central Government, the special power conferred on the appropriate Government under section 17 of the Act shall not be exercisable unless it is satisfied that it is necessary to do so in order to avoid danger to life or property or that it is otherwise necessary to do so in public interest.

10. Repeal :—All rules made by the appropriate Government for the guidance of its officers with respect to acquisition of land for companies under part VII of the Act and in force immediately before the commencement of these rules shall, to the extent of the repugnancy, cease to have effect.

PART IV

CHAPTER II

RULES FRAMED BY THE STATE GOVERNMENTS UNDER S 55 L. A. ACT, 1894. AND EXECUTIVE INSTRUCTIONS

WEST BENGAL

Rules issued by the Government of Bengal under section 55 of Act I of 1894, having the force of law (As corrected up to August, 1926).

NOTIFICATION No. 29 T.—R.

The 24th April 1895 :—In exercise of the power conferred by section 55 of the Land Acquisition Act, I of 1894, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to make the following rules in supersession of the rules issued under section 59 of Act X of 1870 and published under notification, dated the 4th November 1889, at pages 898—900, Part I of the *Calcutta Gazette* of the 6th idem :—

1. 'When any revenue-paying land is acquired under the Land Acquisition Act, 1894 (I of 1894), the proprietor shall' ¹ * * be relieved of the liability to pay revenue to the extent of the Government demand upon the said land ; and such relief shall have effect in the manner hereinafter described :—

(a) in estates in which the instalments of revenue as laid down in the settlement papers are known, it shall take effect from the end of the month immediately preceding that in which possession of the land is taken ; and

(b) in estates in which the instalments of revenue are not known, it shall take effect from the "latest day of payment" of arrears of ²revenue (as determined by the Board of Revenue, Lower Provinces, under section 3 of Act XI of 1859) immediately preceding the date on which possession is taken.

2. In such cases the Collector shall before making an award, ascertain, in accordance with the two next following rules, and record the amount of Government revenue which is to be taken as payable in respect of the acquired portion, and shall, in the event of a reference being made to a Court,

*This rule was substituted for original rule 1 by Government Notification No. 3231 L. A., dated the 3rd September, 1907, published at page 1581, Part I of the *Calcutta Gazette* of the 11th idem.

¹ In the line 3 of rule 1 the words "except as provided in rule 6" have been omitted by notification No. 8082 L. A., dated 25th October, 1919.

² In clause (b) of rule 1, the words "latest day of payment of arrear of revenue" have been substituted for "latest day for payment of revenue" by Notification No. 601 T.—R., dated 13th June, 1918.

furnish the Court, at the time of making the reference, with particulars of the amount of the share so ascertained and recorded.

3. If the land to be acquired be an entire estate or tenure assessed with a specific amount of revenue, the whole of such amount shall be remitted.

4. If the land be not liable for a specific amount of revenue, but be a portion of an estate or tenure which is liable for a specific amount, the proportion of Government revenue to be deemed payable in respect of the land taken shall be ascertained under the following rules :—

1st.—When an estate has, within 20 years next preceding the date of the commencement of proceedings for the acquisition of any land situate therein, been subjected to a detailed settlement, or has formed portion of an estate brought under partition under the Estates Partition Act VIII (B.C.) of 1876, made after enquiry into and record of the assets of the estate, the Government revenue to be deemed payable in respect of the said land shall bear to the assets of the said land the same proportion as the Government revenue of the whole estate bears to the assets of the whole estate, as shown in the settlement or partition proceedings.

*2nd.—When there has been no such settlement or partition as aforesaid, or when although there has been such settlement or partition, the assets of the whole estate cannot, in the opinion of the Commissioner, be accurately ascertained without serious difficulty, then, if the area of the estate is known with accuracy, the amount of Government revenue to be deemed payable in respect of the portion of the land taken shall bear to the Government revenue of the whole estate the same proportion as the area of said portion bears to the area of the whole estate.

3rd.—When the Government revenue deemed payable in respect of the land taken cannot be determined by either of the above rules, one-fourth of the net rent (*i. e.*, the gross rental less a deduction of 10 per cent. for the expenses of collection) of the said land shall be taken to be the amount of Government revenue thereon chargeable.

5. In determining the amount of compensation to be awarded, the Collector shall take into consideration the fact that the land acquired is subject to the burden of the payment of Government revenue.

6.¹ * * *

7. When there is any question whether the land to be acquired is part of a revenue-paying estate, or is revenue-free, the Collector shall decide the matter before making his award, leaving it to claimants to apply for a reference to the Court if they object to his decision. In case of a reference being applied for, the Collector shall, if he has decided that the land is revenue-free, determine the amount of revenue which would be payable for

*Substituted by Notification No. 6598 L. A., dated the 3rd September, 1917, published at page 1938, Part I of the *Calcutta Gazette* of the 5th idem.

¹ Rule 6 has been cancelled by notification No. 8082 L. A., dated 25th October, 1919.

it in the event of its being held to belong to the revenue-paying estate of which it is alleged to form a part.

8. To enable him to calculate accurately the additional compensation to be given under section 23(2) of the Act and to keep up fully and clearly his registers of all lands occupied and compensation paid for them the Collector shall invariably record separately his finding under the first head of section 23 (1) of the Act, which concerns the market value of the land.

9. The procedure laid down as to the payment of the compensation money in cases of reference under section 18 shall apply also to reference under section 30 or section 35. The compensation-money, or, if any of the parties are willing to accept payment to them is admissible, the portion of it which is in dispute and cannot be paid away shall be deposited in Court when the reference is made.

“9A. Where under an award compensation money is payable to a minor, if there is no guardian as specified in clauses (i) to (iv) of the proviso to section 32A of the Act, payment may be made to any other guardian of the of the minor provided he executes a bond agreeing duly to account for, and to refund to the State of West Bengal, if demanded, what he may receive as compensation money and to indemnify the State of West Bengal against all expenses which may be incurred by the State of West Bengal in relation thereto.”

10. In giving notice of the award under section 12 (2), and tendering payment under section 31 (1), to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear. If they do not appear, and do not apply for a reference to the Civil Court under section 18, the officer shall, after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the accompanying form (marked E). The officer shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made. When the payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposits. The officer should, as far as possible, arrange to make the payment due in or near the village to which payees belong, in order that the number of undisbursed sums to be placed in deposit on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative, whether before or after deposit of the amount awarded, such representative must show legal authority for receiving the compensation on behalf of his principal.

¹ Rule 9A was inserted by Notification No. 2128 L. Ref. 2nd February, 1967 of the Governor by amending Rule published under Notification No. 29 T. R., dated 24th April, 1895 as subsequent amended.

² This rule was substituted for original rule 10 by Government Notification No. 4876 L. R., dated 30th November, 1896, published in the *Calcutta Gazette* of the 2nd December, 1896, Part I, pages 1204-1205.

PART IV

CHAPTER III

EXECUTIVE INSTRUCTIONS BY THE GOVERNMENT OF WEST BENGAL

(Chapters VI to XI of the West Bengal Land Acquisition Manual 1951)

General Principles of Valuation

65. Interests of proprietors to be distinguished according to their status :

—In calculating the compensation due to proprietors it is necessary to consider the differences between the interests of the following :—

- (1) Proprietor of permanently-settled estate.
- (2) Proprietor of temporarily-settled estate who is in possession of his estate.
- (3) Proprietor of temporarily-settled estate who is in receipt of malikana.

The two former are entitled to abatement of the revenue of the land required under Government rules 4 and 5. In permanently-settled estates any future increase in the assets will be appropriated by the proprietor, whereas in temporarily-settled estates any increase will be shared by Government on the revision of the demand of land revenue : therefore, normally the value of the interest of the proprietor of a permanently-settled estate is represented by a greater number of years' purchase of the income from the land acquired than the number of years' purchase which represents the interests of the proprietor of a temporarily-settled estate.

In calculating the value of the interest of the proprietor of a temporarily settled estate which is under the management of Government or leased to a farmer, the circumstances of the individual case must be considered. When there is no probability of the proprietor assuming the management of his estate, he may be suitably compensated by the award of the capitalised value of the amount by which his malikana will be reduced after the land has been acquired. When the proprietor is likely to assume the management of his estate, the value of his interest will normally be represented by a greater number of years' purchase of the malikana which number will vary according to the circumstances of the estate and number of years which are likely to intervene before he assumes management. When there are several joint proprietors in a temporarily-settled estate, some of whom have taken settlement while others have stood aside, those who have taken settlement will ordinarily receive a larger share of the total compensation awarded to the proprietors than those who have stood aside. Each case of this sort will be dealt with on its merits.

66. Landlord's Interest :—The simple form of estimate prescribed in paragraph 20 contemplates a case in which the interest of the landlord is confined to the right to receive permanently rent at a fixed rate, and the value of this interest is calculated by deducting the cost of collection and of repairs

(in the case of house property) and the Government revenue and capitalising the net annual profit, and in such cases this is the correct method of valuation of the landlord's interest, and the interests of the other parties can be separately valued. But there are varying conditions which affect the nature of a landlord's interest, and these must be taken into consideration. Thus the value of the interest of the landlord is greater in proportion as the fixity of the tenure of the interested party subordinate to him is less, and in cases in which the holder of the sub-ordinate interest can find purchasers for his interest in the open market subject to the consent of the landlord and on payment of a fee by the purchaser, the landlord is entitled not to a share of the sale price which his tenant can obtain in the open market irrespective of the landlord's consent to the sale, but to compensation for the loss his prospective chances of obtaining a fee from a purchaser. In large estates where there are reliable accounts of the annual income from transfer fees, and where the income from such fees is distinguished from the income derived from premiums on the settlement of new or abandoned holdings, it may be possible to estimate this loss by a calculation based on the normal annual income from such fees and of the proportion of the land under valuation to the total area of the landlord's property. Reliable accounts are not however usually forthcoming, nor would they form a satisfactory basis for calculation in small estates, and the compensation for this loss can generally be given most conveniently by taking it into consideration when deciding at how many years' purchase the net annual profit should be capitalised. If the number of years' purchase is based on evidence which shows in the case of private sales how many times the rent-roll or the net annual profits after deducting collection charges are taken to make up the sale price, the value of transfer fees will have been taken into consideration in those private sales, and no further compensation for loss of prospective transfer fees is due. But if in the absence of evidence respecting private sales the number of years' purchase is fixed on the general principles described in paragraph 68, and transfer fees have not been estimated in calculating the net annual profits, it is proper to award a somewhat larger number of years' purchase in estates in which transfer fees are paid than in those in which they are not paid. Whatever method is adopted, it is most important that the award should show clearly that the question of transfer fees has not been overlooked, and if compensation has been awarded for the prospective loss of transfer fees, in what manner this has been done. It must be remembered that the acquisition of an occupancy holding under the Land Acquisition Act is not a transaction which requires the landlord's consent, and a landlord is not therefore entitled to receive as compensation one-fourth (or whatever the customary portion may be) of the amount awarded to the raiyat as compensation for his interest.

In the case of town lands occupied by tenants-at-will, in which no one subordinate to the landlord has any interest which would fetch a price in the market if sold, the landlord's compensation can sometimes be estimated better by a consideration of the evidence of sales than by a consideration of the rent which the landlord receives.

67. Tenants' Interests :—The values of the interests of tenure-holders, raiyats holding at fixed rents or rates of rent, occupancy raiyats, non-

occupancy raiyats and tenants-at-will depend on the varying conditions of their tenancies. Ordinarily, where the party has a saleable interest, or can find a market for the sale of his interest, the prevailing prices as recorded in registered deeds will provide the most reliable basis for valuation even in cases in which the purchaser cannot obtain a valid title without the landlord's consent. In the latter cases the market value of the interest is the price which it actually fetches in the market, whatever that interest may be. The landlord is not entitled to any share in that portion of the compensation which represents the value of such interest of the tenant, and his claim (if any) based on his right to receive transfer fees must be dealt with by a consideration of his loss of prospective transfer fees. The interests of non-occupancy raiyats and of raiyats holding under unexpired leases will usually be valued on a consideration of their net profits for a short term of years, due regard being paid to the inferiority of their interests as compared with that of occupancy raiyats, and the consequent superiority of the interest of the landlord. The compensation payable to tenants-at-will is generally confined to what is due under the provisions of Sec. 23 (1) (5). Collectors should take care that raiyats are not deprived of their due compensation either through their ignorance of the law and procedure or through encroachment on their rights by parties who are more capable of pressing their claims.

***67-A. Compensation how to be assessed when 2 notifications under Sec. 4 are published.**—In big land acquisition projects, where two notifications under Sec. 4 are published, one in Form 2 or 2A and the other in Form 3 or 3A, the first notification in Form 2 or 2A is to be regarded as "the notification under Sec. 4, sub-sec. (1)" referred to in Secs. 11, 23 (first) and 24 (seventhly). Compensation has, therefore, to be awarded in such cases with reference to the market value of land prevailing at the date of publication of the earlier notification in Form 2 or 2A. The restrictions mentioned in Sec. 24 (seventhly) also come into operation with effect from the same date.

In other cases, however, where only one notification in Form 3 or 3A is published, the award should be made on the basis of the market value of the land as at the date of publication of this notification and the restrictions imposed by Sec. 24 (seventhly) also become operative from that date.

68. Capitalisation of net annual profit :—The principles underlying the practice of capitalisation of the net annual profit should be clearly understood. A purchaser of agricultural or town land, other than a cultivator, ordinarily regards land as an investment yielding interest in the form of rent, and even the purchaser of house property who intends to reside in the house regards the property as an investment which will save him the payment of a certain rent. The net annual profit (or saving, as the case may be) obtained by such purchases therefore represents interests on capital invested, and the rate of that interest is reasonably assumed to be equal to the rate of interest obtainable from other securities of similar safety. An investor in an uncertain security expects and obtains a higher rate of interest than an investor in a safe security. Land is a safe form of security, and consequently an

*This paragraph is based on Government order No. 2029 L. A., dated the 12th February, 1935.

investment in land does not ordinarily obtain a high rate of interest, but some kinds of land constitute safer securities than other, *e. g.*, agricultural land is ordinarily the safest because it is least liable to undergo change and to remain vacant, and the safety of the security of house property depends on the condition of the buildings and the chances of the property remaining unlet. The number of years' purchase at which the net annual profits of land capitalised are generally 16 $\frac{2}{3}$, 20 or 25, though intermediate numbers are sometimes given, 16 $\frac{2}{3}$ years' purchase means that the interest on the investment is treated as being 6 per cent, 20 years' purchase means 5 per cent ; and 25 years' purchase means 4 per cent.

69. Award to include value of trees :—The award to be made by the Collector must include the value of trees standing upon the land, but Collectors should be careful not to pay the value of trees twice over, *e. g.*, when the value of the produce of the tree has already been included in the rent which forms the basis of the award. The raiyat is entitled to compensation for the value of the trees and such compensation should be awarded to him unless, as said above, it has already been included in the rent which forms the basis of the award. The right to the timber of the tree when fallen belongs by the general law (*see* ruling of the High Court—*Nafar Chandra Pal Chowdhuri and others v. Ram Lal Pal*, 22 I. L. R. Calcuta 742) to the proprietor of the land, subject to any custom to the contrary, the burden of proving such custom being on the raiyat. Where, according to local custom, the landlord is entitled only to the rent of the land and not to the value of the trees when fallen, he should not be paid separately for the trees, the market value having been calculated on the rental ; where the landlord and tenant are entitled each to half the value of trees when fell or fallen, they should both receive some separate compensation for trees of any value as timber ; and where the tenant alone is entitled to the value of trees when fell, he alone should receive separate compensation for them. Land is generally made over with trees to the requiring authorities, and the trees are either kept or sold by them when fallen. When, however, trees are sold by the Collector, he should credit the value of the timber to the project.

The standing crops and trees referred to in Sec. 23 (1), *secondly* are crops and trees grown after the date of the declaration, and additional compensation is not payable for them.

70. Huts :—The value of buildings as that of trees and standing crops (other than those grown after the date of declaration) forms part of the market value of the land on which additional compensation is to be paid. When thatched huts or other buildings which can be removed without serious damage are acquired the owners will generally prefer to remove them on payment of the expenses incidental to removal. In parts of the country where it is normally necessary to raise the site before building a house, this fact should be taken into consideration in estimating the the expenses of removal.

71. Masonary buildings :—In rural areas masonry buildings have generally been constructed for the use of a particular individual, and where there is no market for the sale of such buildings, the compensation can sometimes be most suitably estimated by considering the market value of

the dismantled materials and the reasonable expenses incidental to change of residence including the provision of a house with similar accommodation. In such cases due allowance should be made for the depreciation of value of the acquired building on account of the time which has elapsed since it was built, and in the case of large buildings which are often not fully occupied, for the vacant portions of the building which the resident will not need to replace in providing himself with a new residence.

In towns, the method of valuation of house property will necessarily vary according to the nature of the information available as regards rents and sale prices, and the condition of the property. Though both rents and sale prices should always be considered, the methods adopted can be broadly distinguished as valuation based on rental and valuation based on sale prices.

In valuation based on rental, the municipal assessment should be considered where it is made on the valuation of holdings, but the safest guide will be found in the rent actually received for the holdings to be acquired and in the rent actually received for holdings in the immediate neighbourhood which in the position of the land and the nature of the buildings correspond with the holding to be acquired. When the rent has been ascertained, deductions are made for taxes payable by the owner, repairs, collecting charges and periods of vacancy, and the net annual value is capitalised at a number of years' purchase, the number of years being calculated in accordance with the principles stated in paragraph 68 with due regard to the condition of the buildings and the risk of temporary vacancies. When this method is adopted, no separate compensation is paid for the value of buildings, trees, wells or other conveniences since these all form part of the holding for which rent is paid.

The second method is based on consideration of sale prices of house property in the neighbourhood ; but, as the sale deeds frequently do not distinguish the prices of the house and the land, an attempt is made to ascertain what portion of the sale price represents the price of the land by valuing the house separately and deducting its estimated value from the total sale price. In such cases the house is valued on a consideration of its plinth area and supposed cost of construction, a deduction being made for depreciation. When the value of the most similar plots which have been sold in the neighbourhood has been thus estimated, it is sometimes found that the land under acquisition differs from the land which has been sold in having a greater or less proportion of its area adjacent to a road. In order to eliminate the error which might arise from this difference, the collector sometimes makes use of the "belt" system. For example, he takes the land within 60 feet of the road, the land extending 120 feet further back, and all land still further back as bearing the proportional values of 3 : 2 : 1. With the aid of this formula, the land under acquisition is valued by comparison with the estimated value of the land which has been sold, and if there is a building on the land under acquisition, it is valued by estimating its cost of construction and making a deduction for depreciation.

The disadvantages of valuation of town lands on the basis of sale prices is that values vary very widely according to position, and it is

consequently difficult to find a case of sale of similar property : even if the situation of the land is similar, the nature of the building may differ and the relative value of the two plots of land may thereby be obscured. Moreover, the method of valuing a building which has been described above is based rather on the cost than on the market value of the building, and it is artificial seeing that the sale price represents the price of house and land together. Further the "belt" system of valuation is not always satisfactory, as it is difficult to determine in each case what are fair widths for the assumed "belts" and what are fair proportionate values for the lands in each belt.

When, therefore, the conditions permit and records of sales of very similar house property are not available, it is generally preferable to value town lands on the basis of rental, but even when the rental basis is adopted, it is often convenient to check the results by a consideration of the prices obtained for the most similar lands which have been the subject of sales.

72. Tanks :—The following principles should be applied in awarding compensation for tanks :—

- (1) If the tank is used for the purpose of supplying water for irrigation or for drinking, and is in good repair, the cost of construction of a similar new tank including the cost of the land required for the tank and its banks should ordinarily be tendered as compensation. If the tank is out of repair, a deduction should be made on this account.
- (2) If the tank is not used for drinking water or for purposes of irrigation, compensation should only be allowed on its present value, if such value can be ascertained by precedents, or on a number of years' purchase of the receipts from the tank from fish or other sources.
- (3) In case (1), the tank and its banks are valued together. In case (2), the banks should be dealt with separately, compensation being awarded on the basis of the market value of similar raised land in the neighbourhood.

73. Resumed chaukidari chakran land :—(1) In cases of acquisition of resumed chaukidari chakran lands which have been transferred to the zamindar subject to an assessment payable to the panchayat in accordance with Sec. 52, Act VI (B. C.) of 1870, one of the interests for which compensation must be paid is that of the panchayat. Their interest consists of the right to receive annually half the assessed rent. Subject to the condition mentioned in clause (2) of this rule, the liability for making this annual payment to the panchayat will be assumed by Government, and while awarding full compensation for the interests of the several persons who may be interested in the land, the Collector will, in addition to the compensation payable to the other persons, award to Government an amount equivalent to twenty-five times the sum payable annually to the panchayat. In fixing the compensation payable to the zamindar, the Collector will take into consideration the fact that he has been relieved of the liability of making an annual payment to the panchayat. The compensation awarded to Government will be credited under the head

"Miscellaneous Revenue", and the Collector will make provision in his budget for the annual payments to the panchayat. After making his award, the Collector will inform the zaminder of the amount of the annual payment of which he is relieved and will inform the panchayat of the amount to be received annually by them from Government.

(2) In order that the liability of Government may be limited to the annual payment of small sums, the following procedure will be adopted. The Collector will maintain a register in Form 15A of the villages in which resumed chaukidari chakran land is acquired under clause (1) of this paragraph, and on the occasion of each award in favour of Government, he will enter against the name of the village concerned the sum annually payable to the panchayat as a result of the award, so that the total liability of Government up to date in respect of each village may be readily ascertained. If in any land acquisition case the award will result in the total liability of Government in any village amounting to Rs. 50 per annum, the Collector before making the award will refer the case to the Commissioner for obtaining the orders of Government, and Government will then decide in consultation with the Accountant-General whether the liability shall be incurred, or the award shall be made in favour of the panchayat with instructions to keep the amount in the Post Office Savings Bank. But the former practice of acquiring new land to replace the Chakran land will not be followed.

(3) In districts in which such service lands are acquired under the Land Acquisition Act, Land Acquisition Officers should submit quarterly to the Collector of the district concerned an intimation slip in Form 15A of villages in which resumed chaukidari chakran land is acquired, for preparation of the Collectorate Register No. 81, the number of the Chaukidari Union with the name of the police-station being entered in the "Remarks" column of the form.

74. Service lands :—(1) If in any case it is necessary to acquire such service lands as have not been resumed and transferred to the zamindar and are still held free or on a quit rent by a paik, chaukidar or patwari or other person who renders service to Government, the Collector will value all the interests in the holding and record the valuation, but no payment of the award will be made, and the amount will be placed in revenue deposit. The amount will be applied to acquiring under the Land Acquisition Act another piece of land similar in quality and quantity, and situated adjacent to it or in its immediate neighbourhood. The Land Acquisition Officer will personally select the land to be acquired in substitution for the service land, without allowing the intervention of any subordinate officer. If the amount is not sufficient to pay for the land required to replace the service land, the difference will be made good by Government, and the amount charged to Land Revenue. The land newly acquired will be made over to the holder of the service land to be held by him on the same terms as the original land was held at the time of its acquisition. For the period intervening between the date of taking possession of the service land acquired and the date of delivery of possession of the new land to the service-holder, interest on the value of

the service land at the rate of 6 per cent per annum will be paid to the service-holder and to any other interested person ; the interest will be charged to Land Revenue, and the bill submitted to Government in the Land and Land Revenue Department for transmission to the Accountant-General, West Bengal, for audit. The following information, requisite for audit, should be given in the body of the bill :—

- (i) Name of the service-holder or any other person interested.
- (ii) The date from which he was dispossessed of the land.
- (iii) The value of the land he was dispossessed of.
- (iv) The date on which new lands were made over to him or up to which interest is claimed by him (when he does not receive land).
- (v) The date on which the value of the lands was deposited into the treasury and other particulars of the deposit.
- (vi) The amount of interest due.
- (vii) Number and date of Government order sanctioning the acquisition of the land.

(2) Sums held in deposit on account of the value of service lands acquired for public purposes should, when the paiks, patwaris, etc., to whom those amounts would have been payable are dead, and there are no claimants, be withdrawn and credited to Government under head "Miscellaneous Revenue." Similarly, when the amount in deposit is in excess of that expended in the purchase of land required to compensate the holder of any service land, the surplus should be credited to Government under the same head.

(3) This paragraph will not apply in cases of acquisition of pharidari lands : such lands are liable to resumption on the death of the pharidar, and when they are acquired, the pharidar will be compensated by an award in money and no new land will be acquired.

75. Beds of navigable rivers :—Land acquisition proceedings are not necessary in respect of the beds of existing navigable rivers unless it be clearly established that they are private property. When a "river" is the boundary of an estate, the actual boundary is the high bank and the foreshore is part of the river.

CHAPTER VII

REFERENCE

76. Different kinds of reference :—References to the Civil Court are made under Secs. 18, 30, 35, 37 or 49 and the conditions under which the several kinds of reference are made should be clearly distinguished. If application is made for reference under Sec. 18, the Collector is bound by law to make a reference unless the application is barred by the provisos to Sec. 18 or by the second proviso to section 31. It is the duty of the Collector to make the reference with the least possible delay and to do all that he can to expedite its disposal so as to avoid inconvenience to the requiring department and the interested parties.

References under Sec. 30 are made at the option of the Collector and relate only to the apportionment of the compensation. Before making such a reference, the Collector is bound to make an award of the amount of the compensation. When there is a complicated dispute as regards title, or ordinarily whenever there is a *bona fide* dispute as to apportionment in which the parties are expected not to acquiesce in the Collector's apportionment but to apply for reference under Sec. 18, the Collector should make a reference under Sec. 30.

In case of temporary occupation, the Collector is bound to make a reference under Sec. 35 (3) unless the parties interested agree in writing both to the amount of the compensation and to the apportionment which he proposes to make : in such cases, the Collector will abstain from making award, but will explain clearly in his reference the award which he proposed to make and the grounds on which it was based.

On the expiration of the term of temporary occupation, the Collector is bound to make a reference to the Court under Sec. 37 if he and the persons interested differ as to the condition of the land or as to any matter connected with the agreement.

If a question arises as to whether any land proposed to be acquired forms part of a house, manufactory or building the whole of which it is not intended to acquire, the Collector is bound to make a reference to the Civil Court under Sec. 49, and may not take possession until the reference has been decided.

77. An application for reference can be made by any person interested.—An application for reference may be made under Sec. 18 by any person interested, and Sec. 3 (b) defines the expression "person interested" as including all persons claiming an interest. The fact that a claim is unreasonable or that it was not pressed or even made before the Collector does not allow the Collector any option in making the reference if the application is not barred by the provisos to Sec. 18 or the second provisos to Sec. 31.

78. Delegation of power to Collector to decide whether an application for reference should be made by the Manager of a Ward's estate :—The Board, as Court of Wards, has under the authority of Government, delegated to Collectors of districts the power of deciding whether an application should be made by the Manager of a Ward's Attached or Encumbered estate to the Land Acquisition Officer, under Sec. 18, for a reference to the Civil Court, when, in the opinion of the Collector, the award is incorrect or inadequate.

79. Reference not to cover more than one award :—There must always be a separate reference for each case in which a separate award has been made.

80. - Form of reference to Court :—References to the Civil Court under Secs. 18 and 30 should be drawn up in Forms 16 and 17. Forms for references under Secs. 35 and 49 are not prescribed. The Collector should be careful to record all requisite particulars. The statement of the grounds on which the amounts of compensation have been determined need not be elaborate, but should give sufficient information to justify a reasonable presumption that the award has been made with good care and caution.

81. Collector to defend the reference to the Court as a Government suit :

—When a reference to the Court has been made by the Collector under Section 18, on the ground of an objection to the measurement of the land or to the amount of compensation and not on account of dispute as to the persons to whom the compensation is payable or as to the apportionment, the Collector should defend the case exactly as he would in a Government suit. The claimant in such cases is to be regarded as the plaintiff and the Government as defendant ; and it is the duty of the Collector to see that evidence is forthcoming to show the fairness of the amount which he has given as compensation. As soon as the claimant files his written statement in the case in Court, the Government Pleader should apply to the Court for a copy for the information of the Collector, to meet the case set up by the plaintiff with suitable evidence. The Collector must remember that the Court will decide, on the evidence before it, what amount of compensation should be given, and he must, therefore, be prepared with reliable evidence at the trial. In important cases, he should consult the Legal Remembrancer as in ordinary Civil suit.

82. Notice of reference to be sent to local authority or company concerned :—Under the provision of Section 20 (c) of the Act, the Court is required to give notice to the Collector whenever the objection refers to the area of the land or to the amount of the compensation. When the proceeding have been undertaken on behalf of a local authority or Company, the Collector should at once send to them a copy of the notice received by him from the Court, in order that arrangements may be made by them if necessary, to supplement the action taken by the Collector under the preceding rule, to defend the case. In case in which the issues are of special importance, the Collector should also communicate with them by letter.

The Collector should also similarly inform the local authority or Company concerned when an appeal is preferred before the High Court against the decision of the lower court concerning the area of the land or the amount of the compensation.

83. Costs of serving process :—The cost of service of the notices prescribed in section 20 is chargeable to the parties interested and not to Government. When the Collector makes a reference under Section 30, he should in the first instance pay the process fees and remit them to the Civil Court with the reference, and the Government Pleader should apply to the Court to deduct the cost from the compensation payable to the parties. When application is made for reference under section 18, the applicant should be informed of the amount of the cost of service of notices under Section 20 and required to deposit the amount so that it may be remitted to the Civil Court with the reference. If the costs have not been deposited when the reference is ready, the reference should be made and the Collector should inform the Court that the process fees are payable by the applicant for reference and that they have been demanded but have not been paid.

84. Costs decreed to Government :—Costs decreed to Government, although realised from the owner of the land by deduction from the amount of compensation paid, being of the nature of advances recovered, should not

be taken in abatement of the price paid for the land. In paying the compensation money, such costs should be deducted by the Court and intimation of the fact sent to the Collector for adjustment of the advances. In such cases, the date and number of the voucher on which the cost was advanced, when it was incurred, should be stated on the voucher in which the cost is realized, by deduction from the compensation paid, to enable the necessary adjustment to be made in the account office. In cases in which a reference is made to the Civil Court on the parties interested accepting payment or compensation under protest and in which Judge upholds the award of the Collector, the general practice as to recover of costs due to Government should be followed ; in such cases, the Collector must be careful to record the particulars of costs as soon as the Judge's order is received, and to take prompt measures for recovery.

When costs decreed to Government exceed the amount of compensation awarded the matter should be reported to Government in the Land and Land Revenue Department with a recommendation as to whether the excess should be remitted or not.

84A. Register of reference cases :—In order to watch the progress and final disposal of references to the Civil Court under the provisions of the Land Acquisition Act, as dealt with in the foregoing paragraphs and to accelerate the realization of costs decreed to Government in such cases, all officers employed in acquiring land are required to keep a register of Reference Cases in Form 17A.

In the offices of the Land Acquisition Collectors of Calcutta, the special forms of registers now in use should, however, be retained.

CHAPTER VIII

Abatement Of Revenue

85. Mode of dealing with abatement of revenues :—In every case of revenue-paying land, its acquisition under the Act entitles the proprietor to release from liability for any revenue charge upon the land, and it is the duty of the Collector, before determining the amount of compensation to be allowed in the case of any such land which is under acquisition, ascertain, in the manner laid down in rules 3 and 4 of the Government rules, the amount of Government revenue which is to be deemed payable in respect of such land, and to record this for the purposes of the subsequent proceedings.

In the case of estates other than permanently-settled estates, the amount should be calculated so as to eliminate pies from the resultant revenue demand. The only case in which it is impossible to eliminate pies in this connection is where the original revenue demand contained a large number of pies (9 to 11) and the amount of the award is very small, viz., 3 or 4 pies. In all other cases, the award should be so calculated that pies are eliminated. In the case of permanently-settled estates, however, if the number of pies in the resultant demand is over six pies, it should be reduced to six pies, and if it is less than six pies, it should be omitted altogether.

The proprietor receiving the market value is also entitled to have his revenue abated by the amount of revenue to which estate is liable if the land acquired be a whole estate or tenure assessed by the Collector as above upon the land acquired, and assessed with a specific amount of revenue, or by the amount this abatement must in every case be allowed.

86. Submission of abatement statements and inclusion of abatements in return No. IX :—All Land Acquisition Officers will submit abatement statements quarterly to the Collector of the district in Form 19. The Collector's order on these statements is the authority for correcting the tauzi roll and for including the abatements in Tauzi Return No. IX and will be quoted in that return.

On receipt of the Collector's order in question, the Land Acquisition Department will, in the cases of "estates under direct management of Government," prepare copies of the abatement statements, in triplicate, with the number and date of the Collector's order noted on the top, and send them to the Khas Mahal and Tauzi Departments quarterly. The Khas Mahal Clerk and the Tauzi Nabis will retain one copy each for their use and return the third copy with their signature and the date noted thereon, in token of their having received the statement. In the cases of "estates other than those under the direct management of Government," the Land Acquisition Department will forward to the Tauzi Department copies of the abatement statements, in duplicate, with similar information noted thereon and the Tauzi Nabis, in this case, will return the duplicate copy with his signature and the date of receipt as in the other case.

Collectors having been authorised to sanction abatements in consequence of acquisition of land under the Land Acquisition Act, such abatements will be entered in Part I of Return No. IX ; the specific items will not be entered, but the total amount abated for the kist on account of land acquisition will be entered in column 6 of that return ; the words "Land Acquisition abatements" will be written across columns 1 to 3 of the return, and the dates and numbers of the several orders of the Collector passed on abatements will be entered in column 8 of the Return ; on others entries will be made in Return No. IX as regards land acquisition abatements.

CHAPTER IX

Temporary Occupation

87. Procedure for temporary occupation of land in preliminary stages :—Sections 35 to 37 prescribe the procedure to be followed in procuring temporary occupation of waste or arable land. Ordinarily, the procedure laid down for permanent acquisition of land should be followed *mutatis mutandis* when land for temporary occupation under Section 35 of Act I of 1894 is required. In such cases, an estimate alone in Form 4B is needed without a draft declaration. A plan of the land, of which temporary occupation is desired, will be furnished to the Collector with a statement of the reasons for which the land is wanted, and with a request that an estimate may be furnished of the probable cost of the occupation. On receipt of the

estimate which should be endorsed by the Collector to the effect that there is no general or specific objection to the occupation of the land being obtained for the purpose specified, it should be forwarded with the plan to Government for orders, through the prescribed channel of the department concerned. When the project has been sanctioned by Government in the administrative department concerned and the necessary funds have been allotted, the Land and Land Revenue Department, on reference made, as in the case of permanent acquisition of land, will issue order under Section 35 of the Act, authorizing the Collector concerned to procure the temporary occupation and use of the land. 'Arable land' means land which is ploughed for annual crops, such as rice, jute, etc. ; the expression does not include orchards homesteads, tanks, bank of tanks, raised mulberry beds, lands under tea, or other land laid out in permanent crops.

88. Procedure for taking possession of land required for temporary occupation :—It will, however, be observed that in these cases there must be an agreement in writing between the Collector and the parties interested as to the amount of compensation, and that if they differ as to the sufficiency of the compensation or its apportionment, the Collector must refer the matter to the Court. It may sometimes happen that the parties interested do not appear before the Collector after the issue of the notice under Section 35 (2). It then becomes difficult to comply with the provisions laid down in Sec. 36 (1) before entering upon and taking possession of the land. The following procedure will best meet such an exceptional case :—

It should be stated in the notice issued under Section 35 (2) that on the failure of the party to attend in person or by agent at the appointed time the Collector will award compensation *ex parte*, and will enter upon and take possession of the land. The prescribed form of notice is Form 18. This will probably result in the parties appearing before the Collector. If they still do not appear, the Collector should record his finding as to the proper sum payable as compensation, and proceed to take possession of the land. If the parties subsequently appear, he can pay them according to his finding, if they agree ; if they do not agree, he can refer the case to the Civil Court under Section 35 (3). The Collector should, however, endeavour to obtain the agreement of the parties to the compensation awarded and if they agree, to pay them, and payment should preferably be made locally. If payment cannot be made within a reasonable time, the amount awarded should be placed in deposit in the manner prescribed in rule 10 of the Government rules, and in any case it should be placed in deposit before the end of the financial year in which possession is taken.

89. Special procedure in urgent cases of temporary occupation of land :—In cases in which land is urgently required for temporary occupation, it will be sufficient for the Railway Administration to supply the Collector concerned through the prescribed channel, with a plan of the land required, showing existing field boundaries, and at the same time to write or telegraph to Government in the Railway Department to authorize the Collector to procure the temporary occupation and use of the land. The plan should be on the scale prescribed in paragraph 44, and should be accompanied by a list showing for each field, the nature of the crop and the number of trees

standing on it, and whether any building, well or tank exists on it. It is to be noted that under Sec. 35 of Act I of 1894, temporary possession can only be given of waste or arable lands, which do not include lands occupied by roads, tanks, buildings, gardens, orchards, etc. The order to the Collector under Section 35 will, in such cases of emergency, be issued by Government in the Railway Department, and the Collector will take the necessary proceedings in order to procure the temporary occupation and use of the land, obtaining funds for payment due under his award in the manner prescribed in rules 2, and 14 of the rules in Appendix 7, Civil Account Code, Volume I. In these cases, a copy of the order authorizing the temporary occupation of the land should be furnished to the Examiner of Accounts of the Railway concerned and to the Accountant-General, West Bengal.

90. Final report in the case of temporary occupation of land :—(1) In cases of temporary occupation, two reports should be submitted—the first as soon as all compensation under clause 2 of Section 35 has been paid or placed in deposit, and the second as soon as the land has been restored to the parties interested under clause 2 of Section 36. The first report should contain particulars of the area occupied, date of service of notices, the amount of compensation awarded, date of making payment or executing agreement or making a reference to the Court, as the case may be and the date of occupation of the land. The second report should show the date on which the land is restored and the total payments including payments of compensation for damage under clause 2, Sec. 36, together with the particulars of any payments which may have been made subsequent to the submission of the first report. These reports will be disposed of in the same way as final reports in cases of permanent acquisition. In case of temporary occupation of land for railways, a copy of the second report should also be submitted to the Works and Buildings Department.

(2) Restoration or permanent acquisition of land occupied temporarily :—On the expiry of the period of three years provided for in Sec. 35 (1) for temporary occupation of land, the Collector must either restore the land to the parties interested under Sec. 36 (2) or take steps for its permanent acquisition.

91. Principles for assessing compensation for temporary occupation :—The principle to be adopted in assessing the compensation to be offered to persons interested in land to be temporarily occupied is that each party should receive the value of that of which he is temporarily deprived.

It is to be noted that Sec. 35 makes no provision for the payment of an additional amount of 15 per cent on the market value as is provided by Sec. 23 (2) in case of permanent acquisition. When an arrangement is made by which the landlord is to receive the usual rent, or its equivalent, he is *ipso facto* fully compensated and is entitled to no additional payment.

In the case of an occupant, who in view of the terms of Sec. 35 will generally be a cultivator, the Land Acquisition Officer should offer the nett value of the produce of the land, or not less than half of the gross value. In this case, the occupant is subject to a compulsory process by which he is materially affected in his means of livelihood. His position is different from that of the landlord who, at the most, will receive his rent from Government

instead of from his tenant. The cultivator should therefore be treated with reasonable liberality in the assessment of the produce of his land.

The Land Acquisition Officer should ascertain what arrangement the parties interested desire to make as regards the payment of rent, and he should be careful to record this arrangement in the written agreement with a view to the protection of both parties, and to frame his proposals for compensation accordingly. Ordinarily, the minimum disturbance will be caused if the tenant continues to pay rent to the landlord, and in the absence of any valid objection, such an arrangement should be encouraged. When the conditions of temporary occupation make it necessary to remove trees from the land, compensation for the trees should be assessed and offered as in cases of permanent acquisition, and in the case of trees which produce income but will not be removed, compensation should be offered for the loss of income.

Compensation should always be offered for standing crops which were grown before notice of intending occupation was delivered unless it is possible for the tenants to cut them in a ripe condition. When compensation has been assessed for standing crops, it should be considered in assessing the loss of nett profits for the first year of occupation whether the harvest of another crop in addition to the standing crop will fall within the first year of occupation, and if it will not, no further compensation for loss of profits should be offered for the first year.

CHAPTER X

Payment of Compensation

92. Condition under which payment can be made :—After making the award the Collector will tender payment to the parties interested and pay all who accept payment and to whom payment is permissible under Sec. 31. If any parties are unwilling to take payment, he should inform them that they may accept payment under protest, but that if they accept without protest, they will not be entitled to apply for a reference to the Court. In such cases it must be clearly recorded at the time whether payment was received under protest or without protest: Provided that in cases in which all the parties have not accepted the award and the apportionment thereof, no payment shall be made until the time for applying for reference as calculated in accordance with Sec. 18 (2) shall have expired.

93. Competence to receive compensation money :—Even when there has been no dispute before the Collector he is required to consider before making payment whether the claimant in whose favour he has made an award, is competent to receive the compensation money. Section 3 (g) of the Act enumerates certain persons who are entitled to act on behalf of others, in land acquisition proceedings, but the fourth proviso to Sec. 3 (f) lays down that such persons are not competent to receive the compensation money unless they would have been competent to alienate the land, and Sec. 31 (2) of the Act requires that if there be no person competent to alienate the land, the amount of the compensation shall be deposited in

the Court. The question whether any person is competent to alienate the land is a question of law and fact on which precise rules cannot be laid down. Each case in which doubt arises must be examined on its merits and if necessary the Collector should consult the Government Pleader before making payment. A receiver even if entitled to act is not competent to receive the compensation money payable to the person for whom he is entitled to act except by special order of the Court appointing him.

A Hindu widow is not competent to alienate and is therefore not competent to receive payment of compensation unless the land is her self-acquired property or was received as dowry. But at the discretion of the Collector compensation money may be paid to a Hindu widow who has a limited interest in property inherited by her, on the joint receipt of the widow and *all* the existing reversioners, and on their executing a bond to indemnify Government against any loss which the latter may incur in consequence of the payment.

94. Payment into Treasury as Revenue deposit :—Rule 10 of the Government rules contains instructions about payment. When the time has expired and no application for reference has been made, and when the Collector has been unable to make payment to the interested parties either locally or at headquarters, he will cause the amounts due to be paid into the Treasury as Revenue deposits payable to the persons to whom they are respectively due, and vouched for in Form E attached to Government rule No. 10. He will at the same time issue notices in Form No. 20 to the persons to whom payments are due. It is the duty of the Collector to make every endeavour to pay the parties himself and thereby save them the trouble of withdrawing their compensation from Revenue deposit.

95. Methods of Payment :—Payments by the Collector to interested parties are made in cash, by cheque or by money order. When payments are made in cash or by cheque, the parties receiving payment must be duly identified and the name of the identifier recorded, and receipts must be taken.

96. Cash Payments :—No sum exceeding Rs. 20 should be paid in cash at headquarters, and large amounts due to single individuals should not be paid in cash. Ordinarily, the majority of payments should be made in cash in the villages of the payees. No limit is prescribed for the amounts which may be drawn for local payment but the money shall be drawn subject to the conditions (1) that adequate arrangements can be made for its safe transport and custody and (2) that each advance drawn is fully accounted for before a subsequent advance is drawn, for the same purpose.

97. Payment by money order :—Where local payment is not practicable, sums not exceeding Rs. 50 to any individual payee may be made by postal money order, the commission being paid by the Collector, and debited to the "Contingencies" for the project except in the case of Government projects, the acquisition proceedings in which case are undertaken by a Deputy Collector in the general line, when the charge will be met from the Collector's Land Revenue budget grant under the head "Contingencies".

98. Payment by cheques :—All large amounts due to single individuals and all sums in excess of Rs. 20 which are paid at headquarters shall be paid

by cheques payable at the headquarters or sub-divisional treasury, according to the convenience of the parties interested. Cheques must be drawn by the Land Acquisition Officer himself at the time of payment and handed over by him or in his presence to the payees.

99. Delay in payment of compensation to be avoided :—The Collector of the district is required by Government to satisfy himself that there is no avoidable delay in the payment of compensation. Such delay not only causes hardship to the interested parties, but adds to the cost of acquisition, the charges for interest payable under Sec. 34. In Railway projects in which large areas of waste and arable land are taken possession of at one time under Sec. 17, there is a tendency to delay between the taking of possession and the making of the award. In such case the preparation of awards can sometimes be expedited by an increase of the staff, but care must be taken not to increase the staff beyond the limit of the Land Acquisition Officer's powers of supervision and control. Under the orders of the Collector of the district, additional gazetted officers may be temporarily deputed to assist the Land Acquisition Officer in making local payments.

100. Provision of funds :—If the amount to be disbursed is likely to exceed the funds at the Collector's command, he should take timely steps in accordance with departmental instructions to obtain the necessary supply of money before the date on which the payment becomes due, but payment must in any case be made when due and properly applied for.

101. Deleted.

102. Payment of sums in excess of sanctioned estimates :—District Officers are authorised to pay, in anticipation of the sanction of Government, compensation for land acquired, even in excess of the sanctioned estimate, when finally awarded by a Court. The amount thus paid will be kept under objection by the Accountant-General, pending receipt of Government sanction in respect of budget provision, which only is required for the adjustment of an inevitable payment of this nature.

The revised estimate in such cases should be submitted, by the Collector to the officer of the department requiring the land, with a view to the allotment of necessary funds by Government. The Collector should at the same time forward to the Commissioner a copy of such estimate, with a full explanation of the increase, when the amount exceeds Rs. 1,000, and in any other case when he considers it necessary.

103. Rules for payment. Custody of receipt forms and cheque books :

—The rules of the Government of India for the payment of compensation are contained in Appendix 7 of the Civil Account Code, Volume I. The forms of vouchers referred to in the rules are registered in the office of the Press and Forms Manager and can be obtained on indent from him. When a cheque book is used under rule 10, it should be kept under lock and key by the Land Acquisition Officer himself, who should make a periodical comparison of the pass-books from the Treasury with the counterfoils. The blank Form C vouchers should also be kept under lock and sewn together, if necessary, and consecutively numbered by the Land Acquisition Officer ; and when a cheque book is not used, the retained halves of Form C should be compared with the Treasury Officer's advice lists of payments.

104. Adjustment of advances and payments which should be kept separate for each declaration :—On receipt of the treasury advice list referred to in rule 14, Appendix 7 of the Civil Account Code, Volume I, the officer who issued the orders of payment should himself see that the amounts paid are those for which orders were issued by him. When advances are drawn for payment to the payees, they should be separate for each declaration under which the land is acquired, and the receipts for the advances must mention the account officer to whom the corresponding award statements have been sent ; when the payees' receipts are forwarded to the Treasury Officer in adjustment of the advances, they should be accompanied by a statement showing the amounts drawn and paid ; and if there remain any balance in hand which is not required for payments for the lands acquired under the declaration, it should at once be refunded into the treasury, and should not, under any circumstances, be paid for lands taken up under another declaration.

CHAPTER XI

105. Possession to be taken by Collector :—Section 16 empowers the Collector to take possession of the land as soon as he has made an award. It must be distinctly understood that occupation of the land by any other officer or person without written authority from the Collector is illegal. For instance, when land has been taken up for the use of the Works and Buildings Department, possession will be given by the Collector to the Executive Engineer, or to some person duly authorized in writing by the Executive Engineer to receive it, and to no other person.

106. Consideration for public convenience :—Public convenience should be considered as far as possible in taking possession. Notice should be given to the persons interested so that they may have time to make arrangements for moving.

107. Extinction of public rights by acquisition :—In accordance with Sec. 16, land acquired under the Act vests absolutely in the Government free of all encumbrances : therefore no public right of way or other easement continues after possession has been taken. The law does not provide for acquisition subject to the continuance of such rights. If it is necessary for the convenience of the public, that they should continue to use for any purpose land which it is proposed to acquire, the case should be specially referred to Government for orders before the land is acquired, with a view to arrangements being made whereby the public may continue to use the land without any right being conceded or admitted : at the same time it should be reported whether the Government department, local authority or company on whose behalf it is proposed to acquire the land consents to acquisition on the terms proposed. If any such arrangement sanctioned, care must be taken at the time of taking and delivering possession both, to ensure the concession to the public convenience and to avoid the admission of any right thereto.

108. Taking of possession when to be postponed :—Section 48 enables Government to withdraw from the acquisition of any land at

any stage before possession has been taken. Therefore, if any question of withdrawal has arisen, and the Collector should abstain from taking possession until it has been decided. If claims have been made largely in excess of the estimate, and the Collector, though not prepared to allow them, thinks that there are reasonable grounds for fearing that the Court will largely enhance his award, he may either defer making his award, or if he has made his award and the time for making reference has not expired, he may defer taking possession, until he has consulted the requiring officer or department and has obtained orders.

109. Taking of possession under Sec. 17 :—When it is found necessary that possession of land should be taken under Sec. 17, the sanction of Government should be applied for at the time of sending up the declaration under Sec. 6. The following conditions must be fulfilled in cases in which possession is taken under Sec. 17 (1) :—

- (1) The declaration under Sec. 6 must have been published.
- (2) The land must have been marked out and measured under Sec. 8.
- (3) The land must be required for permanent acquisition, and not for temporary occupation and use under Sec. 35, because the effect of taking possession under Sec. 17 is that the land vests absolutely in the Government.
- (4) The orders of Government for taking possession must have been received.
- (5) Compensation for immediate damage must be assessed and offered.
- (6) The land must be "waste or arable". 'Arable land' means land which is ploughed for annual crops such as jute, rice, etc. The expression does not include orchards, homesteads, tanks, banks of tanks, raised mulberry beds, lands under tea, or other lands laid out in permanent crops.
- (7) Fifteen days must have expired after the publication of the notice under Sec. 9 (1).

The first five of the seven conditions mentioned above must be fulfilled in cases in which possession is taken under Sec. 17 (2), but this clause provides, with certain conditions about buildings, that possession may be taken of any kind of land, and it allows possession to be taken immediately after publication of the notice under Sec. 9 (1). Possession should not be taken under Sec. 17 of any land which is reasonably supposed to contain workable mines.

110. Taking possession under Sec. 17 (1) of land required for Railways.—As soon as the declaration under Sec. 6 of the Land Acquisition Act I of 1894, has been published and orders under Sec. 7 and Sec. 17 (1) have been issued, and after the centre line and said boundaries have been marked out on the ground and shown on a plan as laid down in paragraph 39, the Land Acquisition Officer should at once arrange with the District Engineer of the Railway to go over the whole alignment and indicate on the plan what portions of the land to be acquired he wishes to keep from Railway work until he has had time to make a detailed survey of them. He should at once take possession of

all portions not so reserved, deliver the land to the Railway and give written permission to start work in those portions.

In deciding whether to reserve land or not, the Land Acquisition Officer should consider whether the commencement of work is likely to obliterate field boundaries or otherwise alter the configuration of the land to such an extent as to make it impossible to ascertain the quantity of land attaching to each interest to be compensated or to make a fair award of compensation.

The fact that recent survey maps and records-of-rights exist will clearly make it less necessary to reserve land on these grounds.

The Land Acquisition Officer should make it his object to give the maximum amount of assistance to the Railway authorities in forwarding their work that is compatible with a just award of compensation thereafter.

The Land Acquisition Officer therefore will be careful to give possession in all cases in which it is possible to give it and in cases where it is not possible, the refusal must be noted by him with a clear specification of the area referred to, and the reasons for not delivering possession should be recorded.

A statement of the areas reserved giving a specification in miles and chains will be made over by the Land Acquisition Officer to the District Engineer and a copy forwarded to the Chief Engineer of the Railway.

The Land Acquisition Officer should obtain from the District Engineer of the Railway a statement showing the order in which the latter desires that the survey of the reserved areas should be taken up, and, unless there is some special reason which should be recorded, should strictly adhere to that order, and should take and deliver possession and give written permission to start work on each reserved area as soon as his own survey and record of tenancy is completed.

111. Procedure to be followed in cases of lands made over free of cost to a Railway Company.—In the cases of land acquired by Government and made over, free of cost, to a Railway Company for the construction of a Railway, it has been decided by the Government of India that the Railway Company concerned, in the absence of any express stipulation to the contrary, are entitled to dispose of, or use for the purposes of the railway only, any material, trees, buildings or other property that may be on the land when it is handed over to them, but that Government are entitled before handing over the land to dispose, or stipulate, for the disposal, of any such material, trees, buildings, etc. which they have been obliged to acquire with the land, and to apply the proceeds in reduction of the cost of acquisition. It has been stated further that it is the business of the Railway Company to clear the land of all obstacles or obstructions and prepare it for the construction of the Railway, Government undertaking to secure them empty possession only, free of legal encumbrances. Land Acquisition Officer should bear these orders in mind and, whenever possible, buildings, trees, crops, materials or other property acquired with the land should be sold by them, and, if necessary, removed by the purchasers before the land is made over to the Railway Company, unless the

Company desire to take over such buildings, etc., or any portion, for the use of the railway, in which case the value should be fixed for payment by them. When the land must be made over before buildings, etc., can be sold, and cleared, which will often be the case, a stipulation should be made before delivery of possession that the Railway Company shall pay the amount which may be realised by their subsequent sale, a similar stipulation for payment of the value of any buildings, etc., which the company intend to use for the railway, being also made. The amounts received from the Railway Company or by sale shall be credited to the cost of the project.

112. As soon as land is made over to the Railway authorities a certificate of possession should be obtained from them in Form 21, and a copy thereof sent to Government in the Land and Land Revenue Department.

113. **Compensation under Section 48 made on summary enquiry.**—Section 48 permits Government to withdraw from acquisition proceedings at time before possession is taken, except in the case provided for in Section 36. In case of withdrawal, Collector shall fix the amount of compensation, if any, payable for any damage sustained by the owner, following, as far as they apply, the provisions of Part III of the Act, and shall pay the amount with any reasonable costs incurred by the owner in connection with the acquisition proceedings. The Collector may proceed summarily.

Although Section 48 (1) provides for the withdrawal of Government from acquisition only when possession has not been taken, there is no objection to land being restored at any stage of the case after possession has been taken, when so desired by the authorities on whose behalf the acquisition has been made, provided that the persons interested in the land agree to this course, and are willing to receive back their property with such compensation for damages and costs as may be awarded under Section 48 (2). Such cases should be reported to the Commissioner for his orders. Landlords should usually be required to execute an agreement to recognize in their raiyats the same status which they had before the land was acquired : as the Collector is not bound to restore the land to any particular individual, there will not generally be any difficulty in enforcing this condition.

Bengal Standing Order regarding Restoration of Land

Executive Instructions 113¹ states :—

“Although Sec. 48 (1) provides for withdrawal of the Government from acquisition only when possession has not been taken, there is no objection to land being restored at any stage of the case after possession has been taken when so desired by the authorities on whose behalf the acquisition has been made, provided that the persons interested in the land agree to this course, and willing to receive back their property with such compensation for damages and costs as may be awarded under Sec. 48 (2). Such cases should be reported to the Commissioner for his orders. Landlords should usually be required to execute an agreement to recognise

¹ Page 94 in W. B. Land Acquisition Manual, 1951, Part I.

in their *raiya*s the same status which they had before the land was acquired: as the Collector is not bound to restore the land to any particular individual, there will not generally be any difficulty in enforcing this condition."

¹"Where the compensation has not been awarded and paid, it is not necessary that the acquisition proceedings should be completed by award and payment of compensation. If the original owners are willing to take back their interests in the land, a deed of re-conveyance should be executed forthwith without completing the stages of the acquisition proceedings and reciting the up-to-date position of the said proceedings and paying only the compensation for damage, if any, under Sec. 48 (2). In such a case, the re-conveyance must be executed in favour of all the parties having different interests in the land, with recital in the re-conveyance deeds that the holders of the different interests are requiring all their respective interests in the land. If, however, the holders of the different interests in the land or some of them are not willing to take back their interests in the above way, the acquisition proceedings must be completed by award and payment of compensation and thereafter the land has to be disposed of in accordance with the instructions in Chapter XV."

Summary enquiry :—

The W.B. Manual further states²: "Sec. 48 permits Government to withdraw from acquisition proceedings at any time before possession is taken, except in the case provided for in Sec. 36. In case of withdrawal, the Collector shall fix the amount of compensation if any, payable for any damage sustained by the owner, following, as far as they apply, the provisions of Part III of the Act, and shall pay the amount with any reasonable costs incurred by the owner in connection with the acquisition proceedings. The Collector may proceed summarily."

PART IV

CHAPTER IV

Madras Board's Standing Orders.

When local body does no longer require the land

The Madras Board Standing Order 90 (31) provides for the disposal of land acquired at the cost of a local body but which is no longer required, thus :

"Land acquired at the cost of a local body may, when no longer required, be disposed of by that body by sale, mortgage or exchange with the previous sanction of Government. If the local body transfers such land

¹ *Ibid.* The sub-paragraph is based on the instructions issued in Government Order No. 10322 (14) L. A., dated 2nd December, 1949.

² *Ibid.*

by sale, mortgage, exchange, lease or otherwise, the transferee will be liable to pay the ground rent, or assessment which the Collector may determine, and the ground rent or assessment so fixed, will be liable to periodical revision."

Disposal of land no longer required for the stipulated public purpose.

The Madras Board's Standing Order 90 (30) provides in this regard thus : "When land acquired for a public purpose whether by private purchase or by compulsory acquisition is subsequently relinquished, it should be disposed of as follows :—

- (i) If the land relinquished is likely to be again required for public purposes, it should be merely leased out for such term as may be considered in each case.
- (ii) If the land is situated within half a mile of the boundary of a railway station, it should be dealt with under the special rules applicable to such land, which are given in Standing Order No. 15, para 2 clause (iii) :—"if under those rules it can be assigned permanently, it should be disposed of under clause (iv) below."
- (iii) If the land does not fall under either of the above descriptions and was originally building site or town land, it should be disposed of under the rules governing the disposal of Government land of this kind.
- (iv) If the land is not declared unfit for permanent occupation under clause (i) or (ii) above, and was agricultural or pastoral land at the time of the acquisition, it should first be offered at cost price to parties to whom the proprietary right and the right of occupancy, if any, in the land originally belonged or to their heirs, on the terms and subject to the exceptions indicated in the Government of India resolution. If the original owners decline the offer, or if under the resolution just referred to, they are not entitled to the first offer, and the land is not sold at its current market value to the owner of adjoining land, it should be sold by public auction without an upset price but subject to the annual assessment. The sale proceeds of such land will be credited to Land Revenue unless the land was originally taken up for a railway or for irrigation works for which Capital and Revenue accounts are kept. In these cases the sale proceeds should be credited to the railway, irrigation project or work or head of account to which the cost of acquisition was originally debited.
- (v) Divisional officers are competent to re-assign land acquired for public purposes when no longer required, to the original owner or their heirs, on their paying the original compensation *minus* the fifteen per cent allowed for compulsory acquisition. If any reduction is to be made from this amount on the ground that the fitness of the land for agriculture has deteriorated while

Government were in occupation of it, or if the land is to be sold either to neighbouring landholders or by public auction, the previous sanction of the Board must be obtained by an application. It should be understood that all assignments and sales under these rules are made as matters of grace and that the authorities have full discretion to grant or refuse these concessions.

- (vi) When lands are sold under clause (iv) subject to *raiayatwari* assessment it should be stipulated in the sale notice that the assessment on the land will be liable to alteration at any general revision of the land revenue settlement of the district."

PART IV

CHAPTER V

Bombay (Maharashtra)

Rules framed by the Government of Bombay.

BOMBAY GOVERNMENT RESOLUTION.

No. 6188, Dated 25th July 1894,

The Land Acquisition Act X of 1870, having been repealed by Act I of 1894, which came into force from 1st March 1894. His Excellency the Governor-in-Council desires to invite the attention of officers who may be concerned in the acquisition of land for public purposes to the necessity for care in conforming their procedure to the terms and requirements of the new Act, more particularly in regard to the points noted below :—

Section 3, clause (a).

- (1) Claims to easements on as well as to interests in, the property to be acquired must now be considered,

Section 3, (f).

- (2) Land may now be taken up when required for village sites subject to the condition that it is the custom of the district for Government to provide land for the purpose. Proposals to take up land under this provision should be accompanied by a report showing that the condition fulfilled with a view to the issue of the necessary notification.

Section 3, clause (g).

- (3) Claims to represent minors and other persons unable to act for themselves must now be scrutinised with reference to the proviso to the definition of "Persons entitled to act."

Section 5.

(4) In this section the words "or other Chief Revenue Officer of the district" have been added to indicate that disputes as to damages on entry are to be decided by the Collector of the district, not by any officer specially appointed to perform the functions of the Collector under the Act.

Section 5-A

Rules for the guidance of officers dealing with objections lodged under Section 5-A, (Notification No. 9173, R. D. dated 4-10-1962)

In exercise of the powers conferred by Section 55 of the Land Acquisition Act, 1894 (1 of 1894), hereinafter referred to as 'the Act,' the Governor-in-Council, is pleased to make the following rules for the guidance of officers in dealing with objections lodged under Section 5-A of the Act.

1. Whenever any notification under Section 4 of the Act has been published but the provisions of the Section 17 have not been applied and the Collector has under the provisions of Section 4 (1) issued notices to the parties interested ; and on or before the last day fixed by the Collector in those notices in this behalf any objection is lodged under Section 5-A (2), *firstly*, the Collector shall record the objection in his proceedings. *Secondly* the Collector shall consider whether the objection is admissible according to these Rules.

2. To be admissible (a) an objection must be presented within thirty days after the date of publication of the notification under Section 4 or within such period as may be fixed by the Collector ; (b) it must allege some specific objection, such as these :—

- (i) the notified purpose is not genuinely or properly a public purpose ;
- (ii) the land notified is not suitable for the purpose for which it is notified.
- (iii) the land is not so well suited as other land ;
- (iv) the area proposed is excessive ;
- (v) the objector's land has been selected maliciously or vexatiously ;
- (vi) the acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort, will take away important public rights of way or other conveniences or will desecrate religious buildings, grave-yards and the like.

3. After admitting an objection and after having given the objector an opportunity of being heard either in person or by pleader, the Collector shall decide whether it is desirable to hear oral or documentary evidence, which under Section 14 or section 40 of the Act, he has power to call for. If evidence tendered by the objector is admitted, the Collector shall also afford the other party an opportunity of referring it by other evidence or of cross-examining of witnesses. If he admits evidence, he will fix a time and place of hearing it ; and will hear and record it in his proceedings.

4. Agents, other than pleaders, will not be allowed to appear on behalf of persons interested in any enquiry under Section 5-A of the Act.

5. After completing the record of evidence, the Collector shall submit his report and recommendation as to each objection, whether inadmissible or admissible for the orders of Government under Section 5-A (2) of the Act.

Section 6 (proviso).

(5) The addition of the words "wholly or partly" before the words "out of public revenues" makes it permissible to apply the Act to the acquisition of land for suitable objects at the joint cost of public revenues or the funds of local authorities and of private benefactors as well as when the whole costs is to be defrayed from public revenues or the funds of local authorities.

Section 9 clause (2), and Sections 10 to 15.

(6) The correctness of the measurement made under Section 8, and the apportionment of the compensation among the persons interested, are now added to the matters to be dealt with in Collector's award. His enquiry is no longer to be summary, and authority is given to require statements of claims to be made in writing. Except as is noted further on his award now made final, an immediate notice of it must be given to any claimant not present when it is made. Having regard to the greater formality of the enquiry and the possible finality of the award, it will probably be found advisable to require statements of claims to be made in or reduced to writing in all cases in future.

Section 9, clause (4) and Section 45.

(7) Certain conditions are laid down which must be carefully attended to when services of notices by post may be necessary.

Section 10.

(8) Not less than 15 days' notice must now be allowed when any person is called upon to furnish a statement of other persons interested in the land to be acquired.

Section 17 clause (2).

(9) Provision is made for immediate appropriation of land acquired for Railway purposes in certain emergencies, without waiting for the expiration of 15 days from publication of the notice mentioned in Section 9, sub-section (1), subject, however, to reasonable notice to occupants of buildings who may be required to vacate, and compensation must be offered in all cases in which possession is taken in anticipation of the award, for damages arising from sudden dispossession and not excluded by Section 24, as well as for standing crops and trees.

Sections 18 and 30.

(10) No reference to the Civil Court need now be made except on written application, made within the time laid down from a person who has not accepted the award, failing which the award becomes final. It is, however open to the Collector to refer disputes as to apportionment to the Court for settlement.

Section 19.

(11) When a reference is made, care must be taken to comply with the provisions of Section 19, as to the information to be supplied, among which attention may be drawn to those mentioned in clause (2) as to particulars of all notices served upon and statements in writing made or delivered by the parties.

Sections 15, 23 and 24.

(12) The phrase "market value" remains undefined but may be taken to mean the price which the owner might be expected to obtain for his property with full opportunities of time and occasion, such as might be reasonable under all the circumstances of the case. The new Act differs from the old in that it requires the compensation to be fixed with reference to the market value of the land, at the date of the declaration, instead of at the date of the award, and consequently the declaration of a new item, to wit, '(sixthly)' the damage (if any) *bona fide* arising from any diminution in the profits of occupation during the period between the declaration and the Collector's entry into possession. Item "secondly" under Section 23 must apparently be read subject to the condition that compensation for standing crops and trees has not already been paid separately under Section 17(3)

Section 24.

(13) In item '(seventhly)' a provision excluding from consideration any outlay on, or improvement or disposal of, the land *without the sanction of the Collector* after publication of the declaration under Section 6, is substituted for the somewhat vague provision in the former Act including outlay or improvements commenced or effected with the intention of enhancing the compensation.

Sections 27 and 28.

(14) The Court has now a discretion in awarding costs which may be used as a check on extravagant or speculative claim or negligence in making or stating them. On the other hand the effect of Section 28 must be borne in mind. By making unduly low awards, the Collector may now render himself liable to pay interest on any excess amount awarded by the Court, as well as the costs of the reference.

Sections 31, 32 and 38

(15) To save accrual of claims for interest the amount of the Collector's award must now be deposited in Court when for any reason

there is no person able and willing to receive it ; and provision is made for receipt by any person interested of the sum awarded, without prejudice, if it be received under protest as to its amount, to the right of the recipient to demand a reference or to the right of other persons interested to recover from him, and for investment of the amount in certain cases when it has been deposited in Court. A discretionery power subject to the sanction of Government, of settling otherwise than by a money payment with persons having a limited interest in the land even when it is taken up under the Act, is also reserved.

Sections 43 and 44

(16) The new Act makes it clear that land taken up for Railway Companies for which under contract with the Secretary of State, Government is expressly bound to provide land, is to be treated as taken up on behalf of Government, and not under the provisions relating to the acquisition of land for Companies.

Section 48

(17) The taking of possession is now the stage of the proceedings up to which it remains open to Government to withdraw from the acquisition instead of the making of an award or reference as under the old Act.

Section 49

(18) In cases of severance, it is now open to the owner of any building etc., who may have expressed a desire that the whole should be taken up to withdraw or modify his demand at any time before an award has been made, and to Government to acquire the whole, in cases in which extravagant claims to compensation for severance are set up.

Section 50

(19) Local authorities or Companies at whose cost any land may be taken up under the Act are now entitled to be heard and to adduce evidence for the purpose of determining the amount of compensation, but cannot demand a reference.

Notes—"It is necessary also to bear in mind that the rules and instructions under the Land Acquisition Act of 1870 printed in the compilation or rules in force in the Revenue Department have not and are not therefore saved by Section 2, clause (2). They may still be used as a general guide but care must be taken to follow them no further than may be strictly consistent with the provisions of the new Act, and instructions should be applied for in regard to any new questions that may arise." See *Bombay Government Resolution No. 6168 dated 25th July 1894.*

The Rules framed by the Government of Bombay under Section 59 of the Land Acquisition Act X of 1870, published in the Bombay Gazette of 13th March, 1873 :

1. Whenever it shall appear to the Collector desirable that the Government revenue or tax of any kind shall be remitted in payment or part-

payment of the compensation to be awarded for land taken under this Act, he shall estimate the value of such revenue or haks, and deduct it from the estimated compensation to be awarded to the owner of the land.

2. If the land has been surveyed and assessed to the land revenue under the provisions of Act 1 of 1865, or when it bears an assessment according to existing practice, the value of Government claims on such land shall be calculated at not less than twenty-five times the survey assessment : but houses, trees, crops, wells and improvements shall be estimated separately on the best information available to the Collector.

3. When the land to be taken under this Act has not been so surveyed and assessed under Act 1 of 1865, or does not bear an assessment according to existing practice, the Collector shall proceed to assess it on the best information he can procure, and the value of the Government claims on such lands shall be calculated at not less than twenty-five times the assessment fixed by the Collector, with the approval of Revenue Commissioner.

4. When making an award of compensation to be given under Section 42 of Act X of 1870, the Collector or Court shall record separately the compensation to be granted under the first clause of Section 24 of the Act, which concerns the market-value of the land and the portion of compensation to be granted under the 2nd and 4th clauses of that section.

5. The procedure required for a reference under Section 18 shall be applicable to reference under Section 43.

6. When the amount of compensation to be awarded under Section 43 (for temporary occupation of land) has been fixed, and there is a dispute as to the division of the amount among the persons interested, the Collector shall refer such dispute to the Court for decision, and the procedure prescribed by Section 39 shall be applicable to such reference.

7. Any informality in the proceedings of the Collector or Court under this Act shall not vitiate the award, unless the interests of any party or parties are injuriously affected thereby.

CHAPTER VI

MYSORE

Mysore Land Acquisition Rules, 1965

Published in the Mysore Gazette dated Oct, 28th, 1965, Part IV-2-C(i).

1. **Title.**—These Rules may be called the Mysore Land Acquisition Rules, 1965.

2. **Definitions.**—In these Rules, unless the context otherwise requires—

(a) “Act” means the Land Acquisition Act, 1894, as amended by the Mysore Act No. 17 of 1961 :

(b) “Form” means forms appended to these Rules.

(c) "Govenment" means the State Government or the Central Government" as the case may be ;

(d) "Section means a section of the Act.

3. Issue of notice.—Immediately after the publication of the Notification under sub-section (1) of Section 4, the Deputy Commissioner shall as required by the said sub-section cause a notice stating that the land is needed, or is likely to be needed for a public purpose, specifying the purpose and requiring all persons interested in that land to lodge before the Deputy Commissioner, before the date specified in the Notification (mentioning the said date) a statement, in writing, of their objections, if any, to the proposed acquisition of the land or any land in the locality, to be published at convenient place in the locality where the land proposed for acquisition is situated and copies thereof affixed in the offices of the Deputy Commissioner of the district, tahsildar of the taluk and the village chavadi, if any, of the village in which the land is situated. A copy of the notice may also be caused to be served individually, on every person known or believed to be interested in the land to be acquired.

4. Statement of objections.—The statement of objections shall mention how the objector is interested in the land and set out the grounds of objection.

5. Hearing of objections.—(1) If a statement of objections is filed after the date specified in the notification under Section 4 or by a person who is not interested in the land, it shall be summarily rejected.

(2) If any objection is received from a person interested in the land on or before the date specified in the notification under Section 4 the Deputy Commissioner shall fix a date for hearing the objections and give notice thereof to the objectors as well as to the department, company or other public body requiring the land, copies of objections shall also be forwarded to the department, company or other public bodies. The department, company or other public body may file on or before the date fixed by the Deputy Commissioner a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(3) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Deputy Commissioner, the Deputy Commissioner shall hear the objector or his Advocate or Pleader and the representative, if any, of the department, company or other public body and record any evidence that may be produced in support of the objections.

6. Pleaders to appear.—Agents other than Advocates or Pleaders shall not be allowed to appear on behalf of persons interested in any enquiry under section 5-A of the Act.

7. Deputy Commissioner to report to Government.—On completion of his enquiry, the Deputy Commissioner shall before the expiry of six weeks from the last date of filing objections or before the expiry of two weeks from the date on which he receives the report under sub-section (4) of Section 4 whichever is later submit his report and recommendations as to each objection, whether admissible or inadmissible, for the orders of Government under sub-section (2) of Section 5-A.

8. Considerations of objections and issue of final notification.—On a consideration of objections and the Deputy Commissioner's report thereon, if the Government decides—

- (a) that the land should be acquired, the Government shall direct the Deputy Commissioner to proceed under sub-section (1A) of Section 6, and on receipt of report of the Deputy Commissioner the Government shall make a declaration under Section 6 that the land is needed for a public purpose or for a Company.
- (b) that all or any land possession whereof has not been taken should not be acquired, a notification cancelling the notification issued under Section 4 shall be published by the Government.

9. Notice under Section 9.—(1) The notice to be issued under Section 9, shall contain the full particulars of the lands to be acquired. The Deputy Commissioner shall cause public notice to be given at public places calling upon all the persons interested in the land to appear before him either in person or by agent, on a date specified in the notice (such date not being less than fifteen days from the date of service of the notice). The Deputy Commissioner shall also serve similar notices on the occupier, if any, of such land and on all the persons who have an interest therein.

(2) The notice under sub-rule (1) shall contain the particulars of the land needed and shall be in Form "A".

10. Manner of service of notice.—(1) The notice under Rule 9 shall be published at convenient places in the locality where the land to be acquired is situated and copies thereof shall be affixed—

- (i) in the office of the Deputy Commissioner or any other officer appointed to perform the functions of the Deputy Commissioner under the Act ;
- (ii) in the office of the Tahsilder of the Taluk ;
- (iii) in the chavadi of the village, if any, within whose jurisdiction the land lies.

(2) Individual notices shall also be served on all persons known or believed to be interested in the land or who are entitled to act for persons so interested and who normally reside within the revenue district in which the land is situated.

(3) The statement under Section 9 shall be in Form "B".

11. Repeal and Savings.—All rules corresponding to these rules in force in Mysore Area, the Bombay Area, the Hyderabad Area, the Madras Area, or the Coorg District, are hereby repealed ; provided that the said repeal shall not affect—

- (a) the previous operation of any of the rules so repealed or anything duly done or suffered thereunder ;
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any of the rules so repealed.

FORM 'A'

*See Rule 9 (2)**Notice under Sections 9(1) and 10 of the Land Acquisition Act, 1894.*

Whereas the undermentioned land is about to be taken up for a public purpose, namely.....under Notification No.....published in the Mysore Gazette, dated.....all persons interested in the said land are hereby called upon to attend personally or by agent at.....(Place) on.....(enter a date not less than fifteen days from the date of publication of the notice) at..... O'clock to put in a statement in writing (signed by themselves or by their agents) showing the nature of their interests in the land, the amounts and particulars of their claims to compensation in respect of such interests, the basis on which the compensation so claimed is computed, their objections, if any, to the area specified in the declaration and to put in a statement containing as far as may be practicable the name of every other person possessing any interest in the land or any part of it as co-proprietor, mortgagee, tenant or otherwise, the nature of such interest and the rents and profits (if any) received or receivable on account of it for three years next preceding the statement.

(Particulars of land to be entered)

Dated.....

Deputy Commissioner.

FORM 'B'

[See Rule (10).]

(Form of statement under Section 9 of the Land Acquisition Act, 1894.)

To

The Deputy Commissioner

.....
.....

L. A. Case No.....of.....

Re : Acquisition of land for.....

Statement of Claim by.....

The Claimant states as follows :

1. That he is the Proprietor/Co-Proprietor/Sub-Proprietor/mortgagee/Tenant of the land proposed to be acquired in the above case.

2. That he accepts the area given in the notice. Or,

That the land proposed to be acquired in the above case within the boundaries mentioned in the notice is by measurement.....and notas stated in the notice.

3. That this claimant would claim Rs.....per.....of the land and Rs.....for the building standing thereon.

4. That he would claim Rs.....for the crops and trees (if any) standing thereon.

5. That he would claim Rs.....for damage (if any) for severance of the land acquired in the above case from his other land.

6. That he would claim Rs.....for damage (if any) sustained by him by reason of acquisition injuriously affecting his other property, namely.....and Rs.....for injuriously affecting his income.

7. That he would claim Rs.....as expenses incidental to the change of residence or place of business.

8. That he would claim Rs.....as damages (if any) that has resulted from the diminution of the profits of the land between the date of publication of the notification under Section 4(1) and the time of the Deputy Commissioner taking possession.

9. That he would also claim the usual 15% statutory allowance on the above amounts.

10. The basis on which the amounts in items 3 to 8 is claimed....

Note :—The following particulars should always be given :—

A. When the claim is by the owner :

1. Name of the claimant and share.
2. Name of co-sharers and shares.
3. Abstract of title i.e., whether inherited or purchased and if purchased when, by whom, on what date and for what amount purchased.
4. Details of any mortgage or charge on the land.
5. Rents or profits derived from the land for the past three years. It is well to give in this form a Statement showing the names of tenants and amounts collected.
6. Whether competent to alienate land by private sale.
7. Total amount claimed under separate heads.
8. Whether the area given in the notice is accepted or not.

Documents should be filed in support of these statements, if any, exists, and if the area is disputed a map showing the boundaries claimed, the measurement of them and the area.

B. Claim by tenant holding under a lease or by tenant with occupancy right :

1. Name of claimant and shares.
2. Name of co-sharer and shares.
3. Full description of lease.
4. Rent or profits derived from the land by the claimant during the past three years.
5. Whether the premises is used for residential or business purposes. If the latter, the nature of business and the annual profits from it.
6. Total amount claimed under separate heads.
7. Description and value of any fixtures owned by the claimant.
8. Details of any mortgage or charge on the lease.
9. Whether competent to alienate the right under the lease.

C. Claim by mortgagee :—

1. Name of claimant.
2. Amount of mortgage and rate of interest.
3. Amount remaining unpaid.

CHAPTER VII

Uttar Pradesh

(Formerly United Provinces)

*Rules for guidance in awarding compensation for lands
acquired under Act 1 of 1894*

1. **House.**—The rental of houses shall be calculated when possible on the actuals of the three years preceding compensation and the market value shall ordinarily be *eight* times the average of such rental. Where no guide to the rental exists, the calculation shall be based upon an estimate of the cost of material and rebuilding, the former being deducted if made over to the proprietor. For the land occupied by the building, compensation shall be given under Rule 13.

2. **Wells and tanks not used for agricultural purposes.**—The cost of reconstruction shall ordinarily be tendered as compensation under Section 11 of the Act, provided :—

- (1) that if the well or tank has fallen into disuse, compensation shall be allowed on the present value of the material only ;
- (2) that if the well or tank is in bad repair, deduction shall be made on this account.

3. **Wells or tanks used for agricultural purposes.**—The cost of constructing a similar new well or tank shall, with the same provisions as in Rule 2, be tendered as a compensation ; but—

- (1) if the construction of a new well or tank diminishes the culturable area of any part of cultivators's holding compensation shall (if no compensation has been awarded under these rules for the lands occupied by the old well or tank) be tendered for such lands under the rules for awarding compensation to landlords and tenants for land :
- (2) if the irrigated area of the holding is likely to be lessened in any way, compensation shall be tendered to the landlord by reducing his revenue by the difference between an irrigated and unirrigated revenue rate on the land, and to the cultivator under Rule 14.

4. **Trees.**—The market value of timber, and eight times the annual value of fruit in the trees shall be tendered in compensation : provided that the owners may be given the option of cutting down trees without compensation for timber,

5. If any tenant possesses by the local custom any right in the timber or produce of any tree, the award shall be apportioned according to the custom regulating the distribution of profits or the price of the timber.

6. **Crops.**—In the case of ripe crops the owners shall be required to cut and remove them, and no compensation will be necessary to cut an unripe crop, its value will be calculated at the estimated value of similar ripe crops in similar neighbouring land.

7. **Landholder's interests—A cultivated land.**—(1) The recorded rental of the jamabandi shall be ascertained for that portion of the appropriated area which is occupied by tenants and if the land-owner object that the recorded rent is less than rent actually paid, such objection shall not be heard.

(2) The annual value of that portion of the area appropriated which, from being *Sir* on other cause, is cultivated by the proprietor shall be calculated at the recorded rent for similar neighbouring lands with similar advantages paid by tenants-at-will. If *Sir* land is cultivated by sub-tenants, compensation shall be based on the rents recorded for such land.

(3) In the case of lands for which rents are paid in kind ; if no money rates for similar neighbouring lands with similar advantages exist, the annual value shall be estimated at the mean market value of landlord's share of the average recorded out-turn during the past three years.

8. **Culturable land.**—(1) The rental of "cultivable land recently thrown out of cultivation" (meaning by that term land lying out of cultivation for a term less than three years) shall be estimated at not less than one-third and not more than two-thirds of rent of dry cultivated land of similar capacity according as such land is ordinarily left waste for a longer or shorter term.

(2) The profits of cultivable land yielding assets (as from *dhak* jungle, grass, etc.) or the piscary for tanks shall be estimated at the average receipts of three years.

9. The revenue borne appropriated area, if not ascertainable from the record-of-rights shall be calculated on the basis of the assessment rates on the different classes of soil contained in the area ; that on *gauhan* land, for instance, being calculated at *gauhan* rates, that on *bhur* land at *bhur* rates. If no separate rates were assessed on classes of soils, the rate of the whole revenue on the total cultivated area of the *mohal* or *patti* may be taken, allowance in all cases being made accordings as the land taken up is above or below the average, and care being taken to exclude from the calculation any part of the revenue which is due to sayar assets to waste land.

The difference between the revenue, *plus* local and patwari's rates and 12 per cent. cesses and the rental thus calculated is the landlord's net profits.

10. The profits of land exempt from Government revenue, if in such land the proprietary and grantee right be distinct, and if settlement has been made between the proprietor and grantee, shall be calculated in the mode prescribed under rule 7 for the calculation of land paying revenue to Government. If the proprietor and grantee, are the same, and in all cases in permanently settled districts, the declared rental of the lands

recorded in such mahals, checked by the recorded rents of similar land held by the same class of tenants in adjacent villages, after deduction of cesses, and in mahals paying revenue in permanently settled district after deduction of cesses and revenue, shall form the basis of calculation.

11. The number of years' purchase of the profits to be allowed in the case of land assessed to land-revenue or of which the land-revenue has been assigned, or redeemed, must be determined by the Collector on a consideration of the market value and local custom as to sale of such land ; but in the case of lands paying revenue to Government not more than 16 years' purchase, and in the case of lands of which the land-revenue has been assigned or redeemed not more than 25 years' purchase, shall be paid without a reference to the Commissioner under Rule 17. The provisions of this rule together with those of Rule 9, clause 2, are applicable to land subject to malikana appropriated for railway purposes.

In the case of land held under a perpetual lease at a quit rent, the division of the compensation assessed by the Collector between the proprietor and the lessee shall *ordinarily* be made in the ratio of the profits they respectively derive from the land in question. But where, for any special reason, their respective interests in the land cannot equitably be estimated in this ratio, the division shall be made in such manner as may appear to the Collector to be just and reasonable. Where a lease of revenue paying land purports to be in perpetuity, regard must be had to the extent to which lessee's interest may be affected by the provisions of Section 29 of the North-Western Provinces Rent Act, 1881.

12. In the case of cultivable land lying waste beyond the term of three years, or yielding no assets or having no appreciable value owing to proximity to a town or village or otherwise, and not taken into calculation under the above rules, a price may be offered, not exceeding two rupees per acre. In the case of fruit and other grove lands, compensation should be offered not exceeding Rs. 2 per acre *plus* the market value of the timber, and in the case of fruit trees eight times the annual value of the fruit, under Rule 4 above.

13. In the case of barren land yielding no assets, or having no appreciable value from proximity to a town or village or otherwise, a nominal price shall be offered, not exceeding one rupee per acre. In the case of such land, or of land under Rule 12, situate within, or in the vicinity of a town or village, compensation shall be based, if ascertainable, on the market-value of similar land. Should no selling price be ascertainable, compensation shall be estimated at eight times the annual value of any fees customarily paid to the proprietors by occupants of persons for the use and occupation of the land on which such houses are erected. In the absence of sales or fees from such land, a nominal price shall be paid, not exceeding one rupee per 100 square yards.

14. **Interests of tenants.**—The compensation tendered to tenants with rights of occupancy, or in the case of *sir* lands in consideration of the cultivating rights of a proprietor, shall not be less than three years' purchase not without a reference to the commissioner, more than six of rental determined under Rule 7 (1) as the basis of compensation. In proportion as

the rent approaches to a rack-rent, the number of year's purchase tendered in compensation shall be diminished. In the case of ex-proprietary tenants, 20 per cent. shall be added to the rental on which the compensation to tenants with rights of occupancy holding similar land is calculated.

A larger number of years' purchase should be awarded in cases where the tenants' position is much injured by the absence of other available land in the vicinity than in cases where other land is easily obtainable. To tenants-at-will, besides the compensation prescribed under Rule 6, one year's rent shall be awarded.

15. The compensation allowed to tenants at fixed rates in the permanently-settled districts shall be calculated at the market rate of such rights *plus* 15 per cent. thereon authorised by Section 23 (2), provided that no more than twelve years' purchase shall be paid without previous reference to the Commissioner.

16. The officer determining the amount of compensation awarded shall record clearly in every case for which no fixed rate of compensation is awarded the grounds on which his award is based.

17. Cases for which rules here laid down do not provide or in which the compensation provided appears, for any special reasons, inadequate or excessive, shall be forwarded for orders to the Commissioner of the Division who if he agrees with the Collector in recommending a departure from the rules, shall refer the case for instructions to the Board of Revenue.

18. Nothing in these rules shall be construed to override any of the provisions of Section 23 of Act I of 1894.

19. Care should be taken in every instance of permanent appropriation to add 15 per cent. to the ascertained market value of the land under Section 23 (2). Arrangements should also be made for the payment of interest from the date of occupation to the date of payment of compensation, or to the date fixed for payment of compensation, whether the occupation is permanent or temporary.

Rules under Section 5-A of the L. A. Act. (Under Notification No, 7918/1-A—501 dated 19th Nov. 1923)

1. The right of the objector under clause (2) of Section 5-A shall extend not only to making a written objection but also to adducing evidence, if he so desires, in support of his objection.

2. The duty of hearing objections under Section 5-A shall be performed by the 'Collector' [as defined in Section 3, clause (c)] in person and shall not be delegated.

3. When the Collector receives within the prescribed period a written objection from a person interested in the land, he shall cause a notice to be served on the objector to appear before him in person or by a duly authorised representative on a specified date and to produce the evidence, if any, on which he relies. Notice of the hearing and the enquiry shall be given by the Collector to the responsible officer of the department of Government or of the local authority on whose behalf it is proposed to acquire the land, and the latter, if he desires to be heard or to adduce evidence in support of the proposal to acquire the land, shall be permitted to do so either in person or through a duly authorised representative,

4. On the application of either party the Collector may exercise his powers under Section 14 of compelling the attendance of witnesses and production of documents. No oath shall be administered to witnesses.

5. A memorandum of the statements of the witnesses shall be made and signed by the Collector and shall form part of the record.

6. The hearing may be adjourned by the Collector from time to time, if necessary.

7. The Collector after hearing all the objections and recording a memorandum of the evidence produced in support thereof in support of the proposal to acquire the land and after making further enquiry, if he thinks fit, shall submit the case for the decision of the Local Government together with the record of the proceedings held by him and a report containing his recommendation on the objections.

CHAPTER VIII

MADHYA PRADESH

The 20th March 1924

No 627-261-XII & 628-261, XIII.—In exercise of the powers conferred by Section 55 of the Land Acquisition Act, 1894, as amended by the Land Acquisition (Amendment) Act, 1923, as applied to the Berar, the Local Government is pleased to make the following rules for the guidance of officers in matters connected with the enforcement of Section 5-A of the Act :

Rule 1.—Immediately after the publication of the notification under Section 4 (1) the Collector shall, as required by Section 4 (1), issue a notice stating that the land is needed or is likely to be needed, as the case may be, for a public purpose and all persons interested in the land to lodge before the Collector, within thirty days after the issue of the notification, a statement in writing of their objections, if any, to the proposed acquisition. This notice should be published at convenient places in the said locality and copies thereof fixed up in the office of the Collector and in the nearest Police Station.

Rule 2.—The statement of objections should be in the duplicate and should mention how the objector is interested in the land.

Rule 3.—(a) If a statement of objections filed after the due date or by a person who is not interested in the land it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in sub-section (1) of Section 5-A, the Collector shall fix a date not earlier than 7 or later than 21 days from the date of receipt of the objections for hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or

company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

- (c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Collector, the Collector shall hear the objector or his pleader and the representative, if any, of the department or company and record brief memorandum of any evidence that may be produced in support of or against the objections.

Rule 4.—Before submitting his report to the Local Government the Collector may, if he thinks necessary inspect the land proposed to be acquired and make any other enquiry he may deem necessary.

Rule 5.—On completion of his enquiry, the Collector shall submit the case for the decision of the Local Government in the manner provided in Section 5-A (2) of the Land Acquisition Act.

Rule 6.—On a consideration of the objections and the Collector's report thereon, if Government decide that the land should be acquired, the declaration required under Section 6 of the Act should be submitted by the Collector of the districts or Collectors of the districts concerned to Government for approval and publication in the Official Gazette. If on the other hand, Government decide to give up the acquisition, a notification cancelling the notification issued under Section 4 shall be published by them.

CHAPTER IX

MADRAS (Tamil Nadu)

In exercise of the powers conferred by Section 55 (1) of the Land Acquisition Act, 1 of 1894, as amended by the Land Acquisition Amendment Act XXXVIII of 1929, His Excellency the Governor in Council is pleased to make the following rules after previous publication :—

Issue and publication of notice by the Collector

1. Immediately after the publication of the notification under Section 4 (1), the Collector shall issue a notice stating that the land is needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within 30 days after the issue of the notification, a statement in writing of their objection, if any, to the proposed acquisition. This notice should be published at convenient places in the said locality, and copies thereof fixed up in the offices of the Collector, the Tahsildar, and in the nearest police station.

Statement of objections.

2. The statement of objections should mention how the objector is interested in the land,

Hearing of objections.

3. (a) If a statement of objections is filed after the due date or by a person who is not interested in the land it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in sub-section (1) of Section 5-A, the Collector shall fix a date of hearing the objections and give notice thereof to the objector as well as to the department of company requiring the land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answers to the objections and may also depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Collector, the Collector shall hear the objector or his pleader and the representative, if any, of the department or company and record any evidence that may be produced in support of the objections.

Collector's report to Government.

4. On completion of his enquiry the Collector shall submit the case for decision of the Local Government through the Board of Revenue, in the manner provided in section 5-A (2) of the Land Acquisition Act.

Further procedure on Government's decision for or against the acquisition.

5. On a consideration of the objections and the Collector's report thereon, if Government decide that the land should be acquired, the declaration required under Section 6 of the Act should be submitted by the Collector of the District or Collector of the District concerned to Government for approval and publication in the Official Gazette. If on the other hand, Government decide to give up the acquisition, a notification cancelling the notification issued under Section 4 shall be published by them.

(G. O. No. 1851, Revenue, dated 21st December 1923 published at page 16, Part 1 of the Fort. St. George Gazette, dated 1st January, 1924.)

CHAPTER X

ASSAM

Rules dealing with the abatement of revenue of such portions of revenue-paying estates as have been acquired and with other matters,

(Assam Government Notification No. 1211-R dated the 19th April 1932).

1. When any revenue paying land is acquired under the Land Acquisition Act (1 of 1894), the owner shall be entitled to be relieved of the

liability to pay revenue to the extent of the Government demand upon the said land, and such relief shall have effect from the beginning of the revenue year in which possession of the land is taken.

2. In such cases the Collector shall, before making an award in accordance with the two next following rules, and amount of Government revenue which is to be taken as payable in respect of the acquired portion, and shall, in the event of a reference being made to the Court, furnish the Court, at the time of making the reference, with particulars of the amount of the revenue so ascertained and recorded.

3. If the land to be acquired be an entire estate or tenure assessed with a specific amount of revenue, the whole of such amount shall be remitted.

4. If the land be a portion of an estate the amount of Government revenue to be deemed payable in respect of the land taken up shall be ascertained under the following rules :—

(i) In the case of temporarily-settled estates where lands are assessed at bigha rates, the Government revenue to be deemed payable in respect of the revenue-paying land taken up shall be calculated on the extent of land (or of each class of land if the land is classed for the purposes of assessment of revenue) and the sanctioned bigha rate (or sanctioned bigha rates for the different classes under which the land may have been classed for purposes of revenue.)

(ii) In the case of estates not falling under (i) above, the amount of Government revenue to be deemed payable in respect of the portion of the land acquired shall bear to the Government revenue of the whole estate, the same proportion as the area of the said portion bears to the area of the whole estate.

5. In determining the amount of compensation to be awarded the Collector shall take into consideration the fact that the land acquired is subject to the burden of the payment of Government revenue.

6. When there is any question whether the land to be acquired is part of a revenue-paying estate, or is revenue-free, the Collector shall decide the matter before making his award, leaving it to the claimants to apply for a reference to the Court if they object to decision. In case of a reference being applied for, the Collector shall, if he has decided that the land is revenue-free, determine the amount of revenue which would be payable for it in the event of its being held to belong to the revenue paying estates of which it is alleged to form a part.

7. To enable him to calculate accurately the additional compensation to be given under Section 23(2) of the Act, and to keep up fully and clearly his registers of all lands acquired and compensation paid for them, the Collector shall invariably record separately his finding under the first head of Section 23 (1) of the Act, which concerns the market-value of the land.

8. The procedure laid down as to the payment of the compensation money in cases of reference under Section 18 shall apply also to reference under Section 30 or Section 35. The compensation money, or if any of the parties are willing to accept payment of their shares and payment to them

is admissible, the portion of it which is in dispute and cannot be paid away shall be deposited in Court when the reference is made.

9. In giving notice of the award under Section 12 (2) and tendering payment under Section 31 (1), to such of the persons interested as were not present personally or by their representatives when the award was made, the Collector shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them intimating also that no interest will be allowed to them, if they fail to appear. If they do not appear, and do not apply for a reference to the Civil Court under Section 18, he shall after any further endeavour to secure their attendance or make payment, that may seem desirable, cause the amounts due to be paid into the Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the form prescribed or approved by Government from time to time. He shall also give notice to the payee of such deposits, specifying the Treasury in which the deposits have been made. When the payees ultimately claim payment of sums placed in deposit, the amount will be paid to them in the same manner as ordinary revenue deposits. The Collector should, as far as possible, arrange to make the payment due in or near the village to which the land pertains in order that the number of undisbursed sums to be placed in deposit on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative such representative must show legal authority for receiving the compensation on behalf of his principal.

Rules dealing with the filing and hearing of objections under Section 5-A., of the Land Acquisition Act I of 1894. (Assam Government Notification No. 332-R., dated the 15th February 1924, as modified by Notification No. 1738-R., dated the 8th June 1931.)

Grounds of objection.

1. An objection may be filed under Section 5-A (1) on the following, amongst other grounds—

(a) that the purpose for which the land is required is not *a bona fide* public purpose, or

(b) that the particular land notified is not the best adapted to the purpose or that the area is greater than is necessary, or

(c) that the land contains religious buildings, tombs and grave-yards.

Procedure for hearing objections.

2. (a) The objector shall state fully the nature of his interest in the land to be acquired and shall state whether he is or is not in actual possession of the interest. He will be required to prove his interest to the satisfaction of the Collector before his objection is admitted and, if he fails, the objection may be summarily dismissed.

(b) If the objection is admitted by the Collector, he shall fix a date of hearing and shall send a copy of the objection to the Department of Government, Local Authority or company, on whose behalf the acquisition

proceedings have been instituted. The Collector shall allow such body to be represented at the enquiry and shall give the representative of such body an opportunity of being heard.

(c) The Collector shall examine witnesses tendered on behalf of the objector or the opposite party. The proceedings shall be summary and only the substance of the statements made by the parties and their witnesses, if any, shall be recorded.

Cancellation of notification under section 4

3. If it is decided by Government that land notified under Section 4 is not to be acquired, the notification shall be cancelled by a notification in the gazette.

CHAPTER XI

KERALA LAND ACQUISITION RULES, 1963

No. 6773/Bl/62/RD

Dated, Trivandrum, 21st March, 1963

S. R. O. 293/63.—In exercise of the powers conferred by section 61 of the Kerala Land Acquisition Act, 1961 (Act 21 of 1962), the Government of Kerala hereby make the following rules, namely :

1. (i) These rules may be called the Kerala Land Acquisition Rules, 1963.

(ii) They shall come into force at once.

2. In these rules unless the context otherwise requires :

(i) "Act" means Kerala Land Acquisition Act, 1961.

(ii) "Section" means a section of the Act.

(iii) "Government" means the Government of Kerala.

3. Immediately after the publication of the notification under Section 3, the Collector shall issue a notice stating that the land is needed or is likely to be needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within 30 days after the issue of the notification, a statement in writing of their objections, if any, to the proposed acquisition. This notice should be published at convenient places in the said locality and copies thereof fixed up in the office of the Collector and the Taluk Tahsildar.

4. The statement of objections should mention how the objector is interested in the land.

5. (a) If a statement of objection is filed by a person who is not interested in the land it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in sub-section (1) of Section 5, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the departmental officer or company or the local

authority requiring the land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to the departmental officer or company or local authority concerned. The department or company or local authority may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date which the enquiry may be adjourned by the Collector, the Collector shall hear the objector or his Pleader and the representative, if any, of the department or company or local authority and record any evidence that may be produced in support of the objections.

6. On completion of his enquiry the Collector shall submit the case with all the connected records for the decision of the Board of Revenue or the Government as the case may be in the manner provided in sub-section (2) of Section 5. The Collector shall also forward along with his report a draft of the declaration required under Section 6.

7. On a consideration of the objections and the Collector's report or opinion, if the Board of Revenue or the Government is or are satisfied that the land should be acquired, the declaration under Section 6 shall be approved and sent up for publication in the Gazette. If, on the other hand, the Board of Revenue or the Government decides or decide to give up the acquisition, a notification under sub-section (1) of Section 52 withdrawing from such acquisition shall be published.

8. The officer competent to authenticate the orders under Section 6 shall be the Secretary to Government, Additional Secretary to Government, Joint Secretary to Government or Deputy Secretary to Government, where the declaration is made by the Government and the Secretary, Board of Revenue, when the declaration made by the Board of Revenue.

9. The Land Acquisition Officer shall get the basis for valuation and the detailed valuation of the land and improvements, approved by the authority specified in Section 17. The valuation statement for this purpose shall be prepared in the form appended to these Rules.

PART V

LEADING CASES

(Summaries)

(Arranged according to dates)

(1)

Premchand Bural & Anr. vs. The Collector of Calcutta.

I. L. R. 2. Cal. 103.

(Calcutta, High Court, 1876.)

Land Acquisition Act (X of 1870).—Principle on which compensation is to be given.

Where Government takes property from private persons under statutory power, it is only right that they should be compensated on basis of market value of the property laid out in most lucrative way in which the owners could dispose of it. Interest at the rate of 6 p.c. per annum was allowed on amount of the award from the time when the Government took possession.

Facts : The property acquired was 2 bighas 15 cottahs of land including buildings in Bowbazar Street in Calcutta and belonging to the appellants who previously purchased it for Rs. 42,000/- and made improvements on it. The owners claimed Rs. 800/- per cottah for land and Rs. 44,000/- for buildings on the basis of price prevailing in the locality at that time. There were incomes from the said property. The Collector calculated the compensation on the basis of 16 years' purchase on the estimated income of Rs. 172/- per month, and awarded Rs. 33,505/- after making necessary deduction on account of rates and allowing solatium. It was objected and reference was made to the L. A. Judge who awarded Rs. 31,927. So appeal was preferred in High Court. Question was what should be the proper principle for valuation.

Held : When Government takes property from private persons under statutory powers, it is only right that those persons should obtain such a measure of compensation as is warranted by the current price of similar property in the neighbourhood without any special reference to the uses to which it may be applied at the time when it is taken by the Government or to the price which its owners may previously have given for it. In accordance with this principle the question for inquiry is what is the market-value of the property, not according to its present disposition but laid out in the most lucrative way in which the owners could dispose of it. Award of Rs. 39,500/- was made. The owners were also allowed interest at the rate of 6 p.c. per annum on this award from the time when Government took possession of the property.

(2)

Raja Nilmoni Singh Deo Bahadur vs. Ram Bandhu Rai

I. L. R. 7 Cal. 388 (P.C.)

(9.3.1881.)

L. A. Act Ss. 38 and 39—Finality—Whether a fresh suit is maintainable by a person whose dispute as to title or apportionment was decided by L. A. Judge and who has preferred no appeal :—

Facts : The Government of India requiring land for a public purpose (railways) under the provisions of Act X of 1870, gave the requisite notices and proceeded to take 58 bighas of land within the zamindari of Raja of Pachete. These fifty eight bighas were occupied by persons who held land under the title of Jagirdars, but were undoubtedly subject to the superior tenure of the Raja and may be described as mal lands of the Raja. Under S. 14 the Collector made an award for whole amount of compensation about Rs 15000/-. There was a dispute between the Raja and the tenants as to the apportionment of amount between them. The question was referred to the judge who decided and awarded Rs 84/- only in favour of the Raja and the rest to others. The Raja did not appeal as he had a right to do so but he preferred this suit to recover Rs. 13000/ in deposit in the Collectorate of the District on account of compensation of fifty five bighas five cottahs and he contends that he is entitled to a larger amount than that which was awarded to him. In other words, he brings this suit for the purpose of determining the very question which had been determined according to special statutory process by a judge from whose decision he did not prefer any appeal, It was contended on behalf of the Raja that according to S. 39 he is entitled to bring this suit.

Held : In proceedings under the L. A. Act Ss. 38 and 39, the persons entitled to take land compulsorily, deal only with those who are in possession of it or who are ostensibly its owners. It may happen that the real owner being an infant or a person otherwise under a disability, does not appear and is not dealt with in the first instance. That is why the proviso to S. 40 to the effect that nothing contained in that or the preceding sections "shall affect the liability of any person who may receive the whole or any part of the compensation awarded under the Act to pay the same to the person lawfully entitled thereto. This applies only to persons whose rights have not been dealt with in adjudications in pursuance of Ss. 38, 39 and 40 ; and does not permit a person whose claim has been disposed of in the manner pointed out in this Act to have that claim reopened and again heard in another suit." In other words whose dispute as to title or award or apportionment is decided by the L. A. Judge, a suit is barred but not against a person who was not a party to the L. A. proceedings.

(3)

**Maharaja Luchmeswer Singh vs. The Chairman of the
Darbhanga Municipality.**

17 I. A. (L.R.) 90 : 18 Cal 99.
(25.4.1890.)

*(1) Compensation of Re. 1/- for valuable property is colourable,
(2) a suit is not barred there being neither any reference nor an
award. (3) A Municipality can use a land acquired for any
purpose authorised by the statute although not for purpose for which
it was acquired. etc.*

Facts : On 26th August and the 2nd and 9th of September 1874, a declaration was published in the Calcutta Gazette under S. 6 of the L. A. Act that the land in question which was the property of the appellant, was required to be taken by Government at the expense of the Darbhanga Municipality for a public purpose viz.—construction of public ghat. At this time the appellant was a minor under the Court of Wards till 25th September 1879. The Court of Wards was the Commissioner of Patna and the representative of the Commissioner in Darbhanga was the Collector for the time being of Darbhanga who was also the Chairman of the Darbhanga Municipality. Evidence shows that the Commissioner suggested one rupee only as compensation for the entire piece of land and the Court of Ward agreed to accept it on behalf of the minor. The Collector did not give an award but on 14th July 1875 he, by a letter offered one rupee as compensation to the manager of Ward with a request to accept. The rupee was paid by the Collector and the manager accepted the same by a receipt. The land was thereupon taken possession of by the municipality for purpose of creating a bathing ghat. But a part of it was utilised as such and the rest has been used by the municipality as a market. So the appellant filed a suit.

It was contended that (1) The land was not validly acquired. (2) Whether the Court of Wards as manager of the minor could give away minor's property on a nominal consideration, (3) Whether the purpose for which it was acquired could be diverted etc.

Held : (1) That the direction to offer one rupee compensation for the land which had rental of Rs. 16-5-3p annual rental fixed to it, is colourable way of doing indirectly what it was seen could not be done directly viz.—the guardian making a present of the land of his ward.

(2) The Collector ought to have inquired summarily into the value of the land and determined the proper amount of compensation and to tender such amounts to the person interested as provided in S. 24.

(3) It was obvious that he did not adopt this procedure and made no enquiry.

(4) That he did not give an award but took possession as soon as compensation was accepted.

(5) The offer of one rupee compensation by the Collector was not in accordance with his duties and it was a colourable attempt to obtain a title under L. A. Act.

(6) Collector was the representative of the Court of Wards, it was his duty to protect the interests of the minor and to see that provisions of the Act are complied with.

(7) Although some other parties did not accept the compensation but still there was no reference under S. 18 and this was illegal.

(8) There being no award and no reference under S. 18, a suit is not barred.

(9) The Municipality was justified in using the land for any purpose for which the statute authorised its use, although not for the purpose for which it was professedly taken. Appeal was allowed.

(4)

Ezra. vs. The Secretary of State for India in Council & Ors.

32 Indian Appeal 93 : 32 Cal. 605 : 9 C.W.N. 1454

(16.2.1905)

Ss. 40, 41—Proceedings of Collector ministerial—Effect of Award as to value—Rights of owners—Jurisdiction.—Government is sole Judge as to need of public purpose, etc.

Facts : The question of law decided in this appeal was whether certain proceedings taken by the Government of Bengal under Act 1 of 1894 to acquire the appellant's premises in Calcutta for the purpose of providing increased accommodation for the conduct of the business of Public Debt of the Government of India—which is conducted by the Bank of Bengal on behalf of the Indian Government, were valid in law. The suit was brought to set aside the whole proceedings of the Government and the Collector as incompetent. It was contended by the appellant that (1) He did not receive any notice of enquiry and that it was conducted behind his back, (2) Enquiry by Collector as to value, measurements etc. are judicial, so proper notices ought to have been issued and evidences ought to have been taken so as to allow the persons interested to show sufficient causes against the award, (3) *Inter alia* the decision of the Government as to existence of public purpose is arbitrary.

Held : When proceedings are taken for the acquisition of land for any company under S. 39 of the L. A. Act, the Government is constituted under S. 40 the sole-judge as to whether the acquisition is needed for the construction of some work and whether such work is likely to prove useful to the public. The nature of previous enquiry is, in no sense litigious and the Government is given the control of it, neither the promoter nor the owner of the land is entitled to receive notice of enquiry, nor is either of them entitled to be heard.

The proceedings of the Collector regarding the measurement and valuation of the land and resulting in his award are administrative and

not judicial. Such proceedings could not, unless they were corrupt or fraudulent, be impeached on ground of ex-parte decision.

(5)

Maharaja Sir Rameswar Singh vs. Secretary of State.

34 Cal. 470 : 5 C.L.J. 669 : 11 C.W.N. 356 (D.B.)
(1910)

Compensation for disturbance of a franchise—taking of property for purposes of acquisition—method of valuation.

Facts : Some lands on the sides of river were acquired for the purpose of railways. There were ferry services on the river. Because of construction of railway bridges the ferry services were seriously affected. So they claimed compensation in a suit for compensation for disturbance of ferry.

Held : That the taking of property that merely injures a franchise, but does not interfere with the exercise of it, is not such a taking of property from the owners of the franchise as to require compensation. In other words in so far as loss of the income of the ferry results from the user and not the execution of the works of the Railway, no compensation can be claimed.

But compensation for annual loss may be considered and which in the present case ought to be assessed upon one half of the annual loss over a few years. Moderate number of years' purchase may be accepted as a fair test of the value of franchise. Here compensation was assessed at fifteen times the annual loss attributable to the acquisition of land for construction of railway works under S. 23(4) (i) of the L.A. Act. Average profit of last 10 years less expenses were taken.

Interest ought to be allowed on compensation from the date whence ferry ran as a profitable concern after the acquisition of property.

Statutory allowance for loss of annual profits allowed at 1/8th of original sum allowed.

(6)

Hemabai Framjee Pritt vs. The Secretary of State for India.

19 C.W.N. 305 (P.C.) : 13 Bom. L. R. 1097 : 12 I. C. 871
(1914)

Acquisition for erection of dwelling houses for Government official is a public purpose.

Facts : The first appellant was lessee under the Government as successors of the East India Company under a lease dated 18th April 1854 which lease contained a power of resumption in favour of the lessor if "the Company, their successors or assigns, shall for any public purpose, be at any time desirous to resume possession of the premises granted"—upon certain terms as to notice and compensation. The Government gave notice to resume for a public purpose which in the present case was

to erect dwelling houses for the Government officials at adequate rents for their private residence. Question was "is such a scheme a 'public purpose' within the meaning of the lease ? The High Court of Bombay and the Court of Appeal both held that it is. The argument of the appellants was that there cannot be a 'public purpose' in taking land if that land when taken is not in some way or other made available to public at large.

Held by Their Lordships of the Privy Council :

1. The phrase 'public purpose' whatever else it may mean, must include a purpose, that is an object or aim in which the general interest of the community as opposed to the particular interest of individuals, is directly and vitally concerned.
2. The mere charging of rent does not alter the essential character of the purpose for which the buildings are occupied.
3. Hypothetical cases are best postponed for decision until they cease to be hypothetical.
4. The Government exists for the benefit of the subject and whatever conduces to that benefit must be a public purpose. That benefit can be secured primarily only by an efficient administration, which means an efficient service. Such service must depend on the efficiency of men entrusted to carry on same. Public benefit must suffer if the best officers are compelled to serve under hard conditions. The question is not one of legal obligation but of general expediency and public benefit. In substance there is no difference between an house allowance and an house accommodation.
5. The definition in the Land Acquisition Act is inclusive, not exhaustive. S. 6 (3) provides that a declaration by the Government that a certain land "is needed for a public purpose" shall be conclusive evidence, that it is so needed. The object of that clause is, that having regard to the conditions in this country, the needs of sound administration and the public weal, it should not be hampered by any refined distinctions and legal subtleties but must be left to interpret the phrase in a wise and reasonably liberal spirit.
6. Prima facie the Government are good judges of the fact that particular objective is a public purpose but they are not absolute judges. They cannot say "*sic volo sic jubeo*".

(7)

T. B. Ramachandra Rao vs. A. N. S. Ramachandra Rao.

49 I. A. 129 : I. L. R. 45 Mad. 320 (P. C.) : 26 C.W.N. 713 :
35 C.L.J. 545 : 1922 A.I.R. (P.C.) 80.

(31.1.1922)

Decision on a question of title in Land Acquisition proceedings is Res Judicata.

Facts : The suit was brought by the appellants, the grandsons of one Ramajee Bavajee who died in 1858, to recover certain moveable and

immoveable property from the respondents. The first respondent claimed title under a deed of settlement made in 1858 by Ramajee Bavajee in favour of his wife Thulja Boyee and under her will ; The appellants contended that under the deed of settlement Thulja Boyee had only a life interest in the property in suit and further that her title as against the appellants was *res judicata* by reason of a decision in 1897 in certain land acquisition proceedings. With regard to an issue framed as to *res judicata*, the trial Court and the High Court held that this dispute as to title was *res judicata* to the extent of compensation money only, but that is not a correct view. *Badar Bee vs. Habib Merican Noordin* (1909) A. C. 615 (P. C.), and held that where under the Land Acquisition Act (1 of 1894) S. 31 (2) a dispute as to the title to receive the compensation has been referred to court, a decree thereon not appealed from renders question of title *res judicata* in a suit between the parties to the dispute or those claiming under them, whether or not the decree is to be regarded as one "in a former suit" within meaning of S. 11 of C.P.C.

(8)

Mt. Bhagwati vs. Mt. Ramkali

65 I.A. 145 : A.I.R. 1939 P.C. 133 43 C.W.N. 677 : 70 C.L.J. 23.
7th March. 1939

Reference under S. 18 L. A. Act—Decision of L. A. Judge—Res-judicata—Dispute as to title by co-owner—S. 19—Collector's duty—

Facts : The plaintiff and the defendant in this appeal are the widows of two brothers, the appellant of Sagar Mall and the respondent of Kirpa Ram. These brothers were the sons of Janki Kaur died in 1911 and the title under which the property was held by the brothers is in dispute. Kirpa Ram died on 18.3.1925 and Sagar died on 10.3.1924. If the property which prior to their death was admittedly enjoyed by both the brothers was held as joint family property, the appellant as the widow of the last survivor would be entitled to the estate. If on the other hand as was claimed by the respondent, the property was held by the brothers as tenants in common, it would pass to the widows in equal shares. In 1925 a portion of said disputed property was notified for acquisition under L. A. Act. In 1926 the appellant instituted a suit in Munsiff's Court for rent making the respondent a party defendant and claiming whole of the rent. But the said suit having been dismissed an appeal was preferred wherein the appellant and the respondent were given equal half shares of the rent. In 1927 Collector made an award allotting compensation equally to each of the appellant and respondent. Thereafter, the appellant applied for reference under S. 18 L. A. Act. The respondent also objected to the award on ground of insufficiency of the compensation money. In the meantime the High Court in aforesaid second appeal decided that the appellant was entitled

to full share. The District Judge in his award thereafter also held that the appellant was entitled to the entire compensation.

No appeal was filed against this award. The entire money was paid by the Collector under S. 31 (2) to the appellant. So the respondent brought the present suit claiming half of compensation money in 1930. The learned court held that (1) the two brothers were tenants in common, (2) that a family settlement was made between the parties and is binding, (3) That the matter was *res judicata* and decided in favour of the appellant. It was contended that this dispute of title was substantially in issue between the same parties in above-mentioned suit and appeal and decided in favour of the appellant, is *res-judicata*.

Ordinarily under the L.A. Act a dispute as to title is referred by the Collector to the L.A. Judge whose decision is final and binding but in this case the difficulty arises from the form of reference to be made to the judge. It was objected on the ground that the requirement was not complete unless particulars of the reasons for the objections taken, were given.

Held : The Act does not require particulars to be given—it requires only the grounds to be given and by 'grounds' is meant such of the four grounds mentioned in S. 18(1) as are relied upon.

Secondly on the question that there is no reference on the dispute as title.

Held : that the court had before it not only the question of the amount of the compensation but also the further question of amount of compensation and the persons entitled to it. The District Judge did decide this question and is *res-judicata* in later suit. A Collector is not required to submit the question of ownership to the Court.

(9)

Hari Chand & Ors. vs. Secretary of State

A. I. R. 1939 P. C. 235 : 44 C.W.N. 5 : 70 C. L. J. 334 : 1939 (2)
M. L. J. 722,

(30th June 1939)

S. 4—Notification to acquire buildings in cantonment area—claim for compensation—Valuation—Additional compensations :—

Facts : These appeals were to reconsider a number of awards made by way of compensation for the acquisition by the Government of certain bungalows in the cantonment of Peshawar. As a matter of history the cantonments are regulated, so far as regards grants to individuals, by an order of the Governor-General-in-Council of the year 1836 and that order is carried forward to date by series of subsequent orders. Where the Government grants any right to individuals within the area of the cantonments, one of the cardinal conditions is that the Government

retain the power of resumption at any time on giving one month's notice. If they give the notice they are to pay the value of such buildings as may have been authorised to be erected. The Government issued notices along with offer of compensation that was not accepted. The Government resumed the land granted by them and proceeded to acquire the buildings erected on them under the L. A. Act. Contentions were—

(1) notification was bad as it was not a notification for acquisition of land but of an intention to acquire the buildings only ;

Held—that land includes buildings and notification is not invalid.

(2) valuation not properly made—

Held : That the subject to be valued being a building apart from the site the principle of fixing value by ascertaining the cost of reproducing the building at the present time, then allowing depreciation according to age of the building and for the cost of repairs necessary.

(3) that nothing additional compensation for appurtenances of the buildings such as roads, pathways, gardens, trees etc., was allowed.

Held : The premises granted in cantonment area are enjoyed on precarious terms and the compensation has to be restricted to the value of the buildings, so no additional allowance for trees etc. should be made.

(10)

Babu Kailash Chandra Jain vs. Secretary of State

73 I.A. 134 : I.L.R. 1946 All. 738 ; A.I.R. 1946 P.C.132 : 50 C.W.N. 663.

(1st May 1946)

Compulsory Acquisition—Land—compensation—market value—“According to the use to which land was put”—potential use to be disregarded—L.A. Act 1 of 1894 as amended by U.P. Town Improvement Act VIII of 1919 Ss. 23(1), 3(a)—Secretary of State vs. Makhan Das (1928) I.L.R. 50 All. 470 (F.B.) was not correctly decided :—

Facts : A property consisting of pucca building with a flower garden and a pucca wall along with some vacant plots was acquired. The L.A. office and on appeal the Tribunal awarded compensations. On appeal to the High Court, the High Court observed, on the basis of *Secretary of State vs. Makhan Das*, that the first piece of land consisting of pucca building and garden is not put to any use and so there is no profit or income and accordingly appeal of the claimants were dismissed. On appeal the Privy Council held that the observations made in *Makhan Das's* case viz : “neither a plot of land used by its owner as a garden at the relevant date, nor a plot of agricultural land lying fallow at the relevant date, is being put to any “use” within the meaning of S. 23, because the owner is deriving no profit therefrom, consequently in view of the full Bench, the owner is not entitled to any compensation on its

compulsory acquisition," is erroneous. On the true construction of Section 23 the former plot ought to be valued as a garden and the latter plot ought to be valued as an agricultural land. The effect of S. 23(3) (a) as amended is that the possibility of the garden or agricultural plot being used (e.g.) for building purposes in the future must be disregarded, only the present use of the land can be considered for the purpose of arriving at the market value.

(11)

The State of Bihar vs. Rameshwar Singh

1953 S.C.A. 53 : A.I.R. 1952 S.C. 255 : 1952 S.C.R. 889.
(1952)

Bihar Land Reforms Act, 1950 (Act 30 of 1950)—whether the Act is unconstitutional—S. 4 and S. 23(b) void and inoperative—It is unnecessary to state in the Act the precise purpose of acquisition provided it can be gathered from the whole tenor of the Act—no power to acquire for private parties—colourable exercise of power.

Facts : On January 26, 1950 the Constitution came into force. On September 11, 1950 the Bihar Land Reforms Act (30 of 1950) was passed by Bihar State Legislature and published on 25th September 1950 in Bihar Gazette and on same date a notification under S. 1 (3) of the Act was published declaring that the Act would come into force at once. On some date another notification was published stating that the estate and tenures belonging to the respondent and two others passed to and become vested in the State of Bihar. The respondent filed a petition under Art. 226 of the Constitution in Patna High Court challenging the constitutionality of the said Act.

The Patna High Court declared the Act to be unconstitutional and void on the ground of its infringement of Art. 14 of the Constitution. The State of Bihar appealed to Supreme Court. During the pendency of the Appeal the Constitution (First Amendment) Act, 1951 was passed. The Zaminders as petitioners also attacked this Amending Act by separate petitions. It was contended on behalf of the petitioner-zaminders :—

(1) That on a proper interpretation of Arts. 245 and 246 read with entry 36 in List II and entry 42 in List III, the Bihar Legislature had no power to enact the said Act, as it makes no provision for payment of just compensation for the proposed acquisition.

(2) That the proposed acquisition is not for a public purpose.

(3) The Act is a fraud on the Constitution,

(4) The Act is unenforceable in that S. 32 (2) provides for payment of compensation in 40 equal instalments without specifying the period of interval between the instalments, and

(5) The Act delegated essential legislative functions to the executive Government.

Held : The Bihar Land Reforms Act 1950, is not an unconstitutional Act with the exception of provisions in Sec. 4 (b) and 23 (f) of the Act which are void and inoperative.

(1) The Bihar Legislature was competent to make the law on the subject of transference of estates and the Act as regards such transfers, is constitutional.

(2) It is by force of provisions of Art. 31 (2) of the Constitution that it becomes obligatory to legislate providing for compensation under entry 42 of the Concurrent List in order to give validity to a law enacted under entry 36 and not by reason of the use of the words "subject to" in the wording of the entry.

(3) There can be no manner of doubt that acquisition of private property by legislation under entries 33, 36 and 42 can only be made for purposes of the Union, or for purposes of the State or for a public purpose and that it is unnecessary to state in express terms in the Statute itself the precise purpose for which property is being taken provided that from the whole tenor and intendment of the Act it could be gathered that the property was acquired for purposes of State, or for a public purpose and that the intention is to benefit the community at large.

(5) There is no power in the sovereign to acquire private property in order to give it to private person. It must be only for a public purpose.

(6) The barring of provisions of Art. 31 (4) do not take away the court's power to examine whether the legislature that made the law has acted in exercise of its law making power within the list or has merely made some other law though it has ostensibly exercised its powers under a certain legislative head which cannot be used to support the legislation.

(7) The provision i.e. S. 23 (b) that 4% to 12½ p.c. has to be deducted out of the net income on account of costs of works for benefit of rayat etc. has no relation to real fact. It is partially confiscatory in character. Such legislation in my opinion is not permitted by entry 42 of List III. This provision is therefore a colourable exercise of power and is unconstitutional. Sec. 4 (b) and S. 23 (f) of the Act are void.

(12)

The State of West Bengal vs. Mrs. Bella Banerjea.

A.I.R. 1954 S. C. 170: 1954 S. C. R. 558.

(11-12-1953).

West Bengal Land Development and Planning Act (21 of 1948) S.8—Constitutionality—Articles 19 and 31 of Constitution—Principle which determines Compensation that denies increment in value—Valuation and Compensation on basis of date anterior to date of acquisition—whether valid.

Facts : The West Bengal Land Development and Planning Act (21 of 1948) was passed on October 1, 1948, primarily for the settlement of

immigrants into the Province of West Bengal due to communal disturbance and it provides for the acquisition and development of land for public purposes including the purpose aforesaid. S. 8 of the said Act provides *inter alia* in Cl, (b)—“Provided that—

(b) in determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in clause first of sub-section (1) of S. 23 of the said Act shall be deemed to be the market value of the land at the date of publication of the notification under sub-section (1) of S. 4 of the notified area in which the land is included subject to the following condition, that is to say—

If such market value exceeds by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess, shall not be taken into consideration.”

Under the said Act, the State Government acquired certain lands and made over the same to a registered Society called the West Bengal Settlement Kanungo Co-operative Credit Society Ltd. including some lands belonging to Mrs. Banerjea and others, respondents 1 to 3. The said respondents brought a suit in Alipore Subordinate Judge's court for a declaration that the impugned Act was void and *ultra vires* the Constitution. The suit was later transferred to High Court under Art. 228 of the Constitution which held that the above proviso is *ultra vires*. On appeal by the State their Lordships of the Supreme Court held—

(i) Reading the two clauses viz. Art. 31 (5) and (6), of the Constitution together, the intention is clear that an existing law passed within 18 months before January 26, 1950 is not to be saved unless it was submitted to the President within three months from such date for his certification and was certified by him.

(2) Accordingly the provision in Sec. 8 of the impugned Act relating to the conclusiveness of the declaration of Government as to the nature of the purpose of the acquisition is unconstitutional and is not saved by Art. 31(5) of the Constitution.

(3) Although the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of.

(4) The fixing of the market value on December, 31, 1946 as the ceiling on compensation under the latter part of the proviso to S.8 of the West Bengal Act, 21 of 1948 without reference to the value of the land at the time of the acquisition, is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of Art. 31(2). For, the fixing of an anterior date for the ascertainment of value which might have no relation to the value of the land when it is acquired, may be many years later, cannot but be regarded as arbitrary.

NOTES

It should be noted that the above case was decided on 11. 12 1953 i. e. prior to the Constitution Fourth Amendment Act passed on 27. 4. 1955 which provided in effect that the adequacy of compensation is not justifiable. Now, recently in *State of Gujarat vs. Shantilal* A.I.R. 1969 S. C. 634, it has been held *inter alia* that both the adequacy of compensation as also the principles for determining the compensation are not justicable unless they are fraudulent or irrelevant, because of the Fourth Amendment, and held, therefore, that the cases of *Bela Banerjea* and *Subodh Gopal Bose* continued to apply only to Statutes prior to Fourth Amendment. *Vide* notes under Shantilal's case, *Supra*.

(13)

State of West Bengal vs. Subodh Gopal Bose & Ors.

(1954) S. C. A. 65 : A.I.R. 1954 S. C. 92 : 1954 S. C. R. 587.

17-12-1953)

West Bengal Land Revenue Sales (West Bengal Amendment) Act, 1950. (West Bengal Act, VII of 1950) Sec. 7—Whether ultra vires Arts. 19(1) (b) and Art. 31 of the Constitution.—Art. 31 of the Constitution—whether Clauses (1) and (2) are mutually exclusive —‘Deprivation —’ Acquisition,’ ‘taken possession of’,—meaning of—abridgment of right—when amounts to deprivation.—Art. 19(1)(f) has no reference or relation to any right in any particular property which is dealt with under Art. 31.

Facts : The respondent purchased a Touzi at a revenue sale in 1942 under S. 37 of the Bengal Land Revenue Sales Act, 1859 and the purchaser acquired a right “to avoid and annul all under-tenures and forthwith to eject all under-tenants” with certain exceptions. The suit was brought to enforce the said right and which was decreed. An appeal was pending when the West Bengal Land Revenue Sales (West Bengal Amendment) Act, 1959 was passed. It substituted S. 37 by a new Section 37 and by S. 7 provided that all pending suits, appeals and other proceedings which has not already resulted in delivery of possession, shall abate. Thereupon a writ petition was filed in High Court which held that the abovementioned right to evict under-tenants being a vested right acquired by him under his purchase before S. 37 of the Amending Act was amended, the retrospective deprivation of that right by S. 7 of the Amending Act, was an infringement of his fundamental right under Art. 19(1) (f) to hold property.

The State appealed to Supreme Court and where it contended that if this right to annul under-tenures and evict tenants, was “property” under Sec. 19(1) then it was also “property” within meaning of Cl. (1) of Art 31 and as such the “deprivation” being under authority of law namely S. 7 of the amending Act, such deprivation was lawful, Alternatively it

was a reasonable restriction on the enjoyment of the property in the interests of general public under Cl (5) of Art. 19.

Held : (1) What the Amending Act seeks to do is to enlarge the scope of protection provided by the exception in the old Section as it was found to be inadequate, while conferring certain compensating benefits on the purchase. The abridgement to be effected retrospectively of the rights of the purchaser at a revenue sale is not so substantial as to amount to a deprivation of his property within meaning of Art. 31(1) and (2). No question accordingly arises as to the applicability of Cl. 5 (b) (ii) of the said Article to the case.

(2) By Article 31 the Government is prohibited from making a law authorising expropriation except for public purposes and on payment of compensation.

(3) Clauses (1) and (2). of Art. 31 are not mutually exclusive but should be read together as dealing with same subject.

(4) The word "acquisition" and its grammatical variations should in the context of Art. 31 and the entries of the 7th Schedule, be understood in their ordinary sense and the additional words "taking possession of" or "requisition" are used not in contradistinction with, but in amplification of the term "acquisition" so as to make it clear that the words taken together cover even those kind of deprivation which do not involve the continued existence of the property after it is acquired. The expression "taking possession" can only mean taking such possession of the property it is susceptible of and not actual physical possession.

(5) The West Bengal Land Revenue Sales (Amendment) Act is 1950 *intra vires*.

(6) In the result the appeal by the State of West Bengal is allowed, the judgment of High Court set aside.

Notes

Vide notes under the case of *State of Gujarat vs, Shantilal*, *supra* where it was held recently that the above decision being prior to the Constitution Fourth Amendment, applies only to statutes passed before the said Fourth Amendment.

(14)

The State of Bombay vs. Bhanji Munji and Anr.

1955 (1) S C. R. 777 : A.I.R. 1955 S. C. 141
(Oct. 12. 1954.)

Public purpose need not be stated in express terms, provided it can be gathered from the Act and that the intention was to benefit the community at large—Omission to set out the purpose in the order is not fatal provided it can be proved from facts in other ways.

Facts : The Governor of Bombay issued orders under Section 6(4) (a) of the Bombay Land Requisition Act, 1948 requisitioning the premises of the respondents. The Act of 1948 would have expired in April 1950 but its life was extended by Bombay Act II of 1950. The object of the Act was to accommodate the homeless and Government officers. The respondents are either the owners or the tenants of the premises requisitioned. Under the Act only premises—to which a special meaning is given namely premises which were 'let' or 'intended to be let'—within the meaning of S 4 (3) can be requisitioned and the Government requisitioned the premises in exercise of the power under the Act. In the present case the only right to occupy the premises as tenant or licensee or to let or sublet is gone. The following contentions were made inter alia :—

(1) As the later Acts were after the Constitution and as the life of the main Act was extended after the Constitution came into force, it is said that they are all hit by Articles 19 (1) (f) and 31 (2), firstly because the restrictions imposed on the right to hold, acquire and dispose of property are neither reasonable nor in the interests of the general public and secondly because the Act does not require that there should be a public purpose.

(2) That there was total deprivation.

(3) There is no specific description of the public purpose for which requisition is made, in the order itself.

(4) That though the object of the Act was to accommodate the homeless but actually premises were given to persons who informed of the vacancies and later to Government servants, and so these were not public purposes.

(5) That the onus of proving that the premises were 'let' or 'to be intended to be let' was on the Government.

Held : Article 19 (1) (f) read with Clause (5) postulates the existence of property which can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by Clause (5) cannot be brought into play. In the present case the right to occupy the premises has gone, as also the right to transfer, assign, let or sub-let. What is left is merely the husk of title in lease-hold. Art. 19 (1) (f) therefore is not attracted.

There is no deprivation and the question of compensation is there. The Bombay Land Requisition Act 1948 provides for compensation in S.8 and the requisitions were made for a public purpose. Therefore the provisions of Art. 31 (2) of the Constitution are complied with. Sections 5 (1) and 6 (4) (a) of the Act as amended are not *ultra vires* under Art. 19 (1) (f) and 31 (2) of the Constitution.

A Statute is not invalid for the reason that the purpose for which property is requisitioned is not stated in express terms in the Statute itself provided that it can be gathered from the whole tenor and intendment of the Act and that the intention was to benefit the community at large.

It is also not necessary to set out the purpose of the requisition in the order. The desirability of such a course is obvious because when it is not done, proof of the purpose must be given in other ways. But in

itself an omission to set out the purpose in the order is not fatal so long as the facts are established to the satisfaction of the Courts in other ways (a).

The onus of proving that the premises were not 'let' or 'to be intended to be let' rested on the person who alleged that the premises in the case were not premises within the meaning of the Acts and so could not be requisitioned.

The onus of proving that a statute is illegal, is on the person who alleges it.

(15).

Lilavati Bai vs. The State of Bombay.

A. I. R. 1957 S. C. 521 : 1957 S. C. R. 721
(1957)

Constitution of India, Art 13,31(3), (5) and (6)—Bombay Land Requisition Act 1948 as amended by Bombay Acts 2 and 39 of 1950 not ultra vires—Construction of Statute—opinion of the State Government—Rule of ejusdem generis, when to be applied etc :—

Facts : The petitioner was the widow of one Dharamdas who was the tenant of the premises in question. Dharamdas died in November 1953. On 27. 1. 1954 the Government made an order under Sec. 6 (4) (a) of the Act requisitioning the premises. This order proceeded on the basis that Dharamdas had ceased to be in occupation of the premises in October 1952 apparently by reason of the fact that he had handed over possession of the premises to one Patel, the so called lodger or paying guest, as was alleged by petitioner. Patel did not make any complaint about non-service of the order made by the Government which was pasted on the outer door of the premises. It was contended on behalf of the petitioner—

(1) That the Bombay Land Requisition Act 1948 and as amended is *ultra vires* the Constitution as being violative of Arts. 19(1)(f) and 31(2) as the Act did not contain the word "public purpose".

Held : That whereas the Act had been passed in its substantive form in April 1948 it was a good law as an 'existing law' within meaning of Art. 31(3) of the Constitution. The amendment acts containing words 'public purpose' extended to the original Act. The Amendment Act 39 of 1950 only made explicit what had been left to be gathered from the whole tenor of the Act.

(2) It was contended that the opinion of the State Government as to 'public purpose' was not conclusive and not properly arrived at.

Held : The Act has made a specific provision to the effect that the determination on the questions referred to in S. 5 and 6 of the Act by the State Government shall be conclusive evidence of the declaration so made.

(a) *Biswabhusan Naik v. The State of Orissa*. 1955 (1) S. C. R. 92.

But that does not mean that the jurisdiction of the High Court under Art. 226 or of this Court under Art. 32 or an appeal has been impaired. In a proper case the High Court or this Court in the exercise of its special jurisdiction under the Constitution has the power to determine how far the provisions of the statute have or have not been complied with. But a finding of fact is not a collateral matter and cannot be reopened. The opinion of the State Government is a subjective opinion and not an opinion subject to objective lists. A.I.R. 1949 P. C. 136 relied on.

(3) The Bombay Land Requisition Act is covered by Saving Clause 5(a) of Art. 31 being an 'existing law.'

(4) The Rule of *ejusdem generis* is intended to be applied where general words have been used following particular and specific words of the same nature.

(16)

K. K. Kochuni vs. State of Madras

1960 (II) S. C. A. 412 : A.I.R. 1960 S. C. 1080
(4.5.1960)

Madras Marumukathyam (Removal of Doubts) Act No. XXII of 1955 enacting Sthanam properties possessing certain characteristics, shall be deemed always to have been properties of tarwad—whether it deprives fundamental rights—whether expropriatory in character—whether hit by Art. 19 (1) (f) and not saved by Cl (5) of Art. 19.

Facts : K. K. Kochuni the petitioner is the holder of Kavalappara Sthanam to which the estate is attached. K. K. Kochuni being senior-most male member of the family was the ruler of Kavalappara territory since pre-British times. There were various other Sthanams and large properties are attached with each of them. The properties are impartible. In 1932 Madras Marumukathyam Act (22 of 1932) came into force, whereupon the members of Malabar Tarwad were given a right to enforce partition of the tarwad properties or to have registered as impartible. The matter went up to Privy Council that held that the Kavalappara estate is an impartible estate and that members of Tarwad had no interest in them. After this the Madras Marumukathyam (Removal of Doubts) Act no. 22 of 1955 enacting sthanam properties possessing certain characteristics shall be deemed and always to have been deemed properties of tarwad.

Questions were—whether the impugned Act was meant for reform—whether fundamental rights of property have been infringed.

Held : That the impugned act destroys the finality of decrees of Courts establishing title of Jenmies to sthanam properties. It affects the undisputed title of Sthanams and statutorily confers title retrospectively on members of tarwad who had none before. It is legislative device to take the property of one and vest it in another without compensation and so

unreasonable and is directly hit by Art. 19 (1) (f) and is not saved by Cl. (5) of Art. 19 of the Constitution. There is no intention of any agrarian reform in the Act and it does not effectuate any agrarian reform and regulate the rights *inter-se* between landlords and tenants, and so void and *ultra vires* the Constitution.

(17)

Babu Barkya Thakur vs. State of Bombay.

A.I.R. 1960 S. C. 1203 : 1962 (II) S. C. A. 425 : 1961 (1) S. C. R. 128,
(1960)

Rèquisition for a company—public purpose :—

“The provision of Art. 31 (1) (of the Constitution) makes it clear beyond all controversy that in order that property may be compulsorily acquired, the acquisition must be for a public purpose and by authority of law. But Art. 31 (5) lays down that nothing in Cl. (2) shall affect the provisions of any ‘existing law’ to which the provisions of Cl. (6) applies and the L. A. Act is obviously a law to which provisions of Cl. (6) do not apply. Therefore even if the Act contemplated acquisition for a company which may or may not be for a public purpose it would be saved by Art. 31 (5) as an existing law. (*Lilavati Bai vs. State of Bombay*, 1951 S.C.R. 721). Part VII makes it clear that the appropriate Government cannot permit the bringing into operation the effective machinery of the Act unless it is satisfied as aforesaid to enable the company to erect dwelling houses for workmen employed by it or for the provision of amenities directly connected with the company or that land is needed for construction of some work of public utility. These requirements indicate that the acquisition for a company also is in substance for a public purpose..”

(18)

(Pandit) Jhandulal and others vs. The State of Punjab.

A.I.R. 1961 S. C. 343.
(1961)

Acquisition for a company can also be made primarily for a public purpose and then Part VII need not be complied with.

A notification under S. 6 of the L. A. Act stated that it appeared to the Government of Punjab that the land is required to be taken by Government for a public purpose, namely, for the construction of a labour colony under the Government sponsored Housing Scheme for the industrial workers of the Thapar Industrial Workers' Co-operative Housing Society Ltd. and it has been observed by the Court that ‘it was

clear from the Government Housing Scheme that a substantial amount to be expended on this scheme comes out of the revenues in the form of subsidies and loans.' It was contended, that as the acquisition was for a Society which is a 'Company' within the meaning of the Act the provisions of Part VII must be complied with and as this was not done, the acquisition was illegal. It may be mentioned that S. 17 of the Act was amended by the Land Acquisition (Punjab Amendment) Act (II of 1954) which contains *inter alia* the power to acquire land for construction of labour colonies under a Government Sponsored Housing Scheme and which were treated as works of public utility.

Held : The acquisition for Government purpose of building labour colonies is a public purpose and the essential condition for acquisition for a public purpose is 'that the cost of acquisition should be borne wholly or partly out of public revenue. Hence an acquisition for a company can also be made for a public purpose within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. Then Part VII is not applicable. If on the other hand the acquisition for a company is to be made at the cost entirely of the company, then it comes under provisions of Part VII.

(19)

Raja Harish Chandra Raj Singh vs. Dy. Land Acquisition Officer & Anr.

A.I.R. 1961 S. C. 1500 : LIX A.L.J. 650 : (1962) I. S. C. R. 676.
(30th March 1961)

L. A. Act Secs. 12 (1) and 18 (2) Proviso (b)—Date of the Collectors' award—Limitation runs from the date of communication of the contents of the award.

Facts : The appellant Raja Harish Chandra Raj Singh was the proprietor of a village in district of Nainital. It appears that proceedings for compulsory acquisition of land including the said village for a public purpose were commenced by respondent No. 2, the State of U. P. and necessary steps were taken. Appellant filed his claim. In these proceedings an award was made signed and filed in his office by respondent No. 1 on March 25, 1951. No notice of this award was given to this appellant as required by Sec. 12(2) and it was only on or about January 13, 1953 that he received information about the making of the said award. The appellant then filed an application on February 24, 1953 under Sec. 18 requiring the matter to be referred for determination of the Court as according to him compensation was too inadequate. Respondent No. 1 took the view that the application was time barred under S. 18 and rejected. The appellant filed a writ petition which was allowed. Against this there was an appeal in the High Court which held that the application was time barred. Against that order the present appeal is preferred.

Held : The award in a sense is a decision of the Collector but legally the award cannot be treated as a decision ; it is in law an offer or tender of compensation determined by the Collector to the owner of the property. In that case the making of the award must involve the communication of the offer to the party concerned. Even if it be an administrative decision, it affects the rights of the owner and it is essentially just and fair that it should be communicated actually or constructively and limitation runs from date of communication of the contents of the award.

(20)

Karimbil Kunhikoman & Anr. vs. State of Kerala

(1962) 2. S. C. A. I : (1962) Suppl. 1 S. C. R. 829.

(5.12.61)

Kerala Agrarian Relations Act, 1961—whether ultra vires—Ryotwari lands in Kerala, whether estates. Discrimination between pepper and areca plantations on the one hand and tea, coffee and rubber plantations on the other—whether, violative of Art. 14 of the Constitution—Definition of ‘family’ whether violative of Art. 14—Progressive cuts on purchase price and market value—whether violative of Art. 14, ultra vires etc.

Facts : Petitioners hold large areas of lands as ryotwari Pattadars and wherein they have areca and pepper plantations besides rubber plantations. The Kerala Agrarian Relations Act 1961 was passed with the object to do away with intermediaries and to fix a ceiling and give the excess land, if any, to the landless. It provided for acquisition of ‘estates’ as defined under the existing law i. e., Act of 1908. S. 2 (39) of the Kerala Agrarian Relations Act 1961 includes tea, coffee, rubber etc. within definition of plantation but excludes areca and pepper plantations but which are liable to acquisition under the Act. S. 98 of the Act fixes ceiling of prices in two ways. The first by reference to a family as defined in the Act of not more than five members which is allowed 15 acres to 25 acres. The second is by reference to an adult unmarried person who is allowed $7\frac{1}{2}$ acres thereby giving an artificial definition of family.

Further the scale of reduction of purchase price or compensation is extremely unreasonable. It was contended that lands held by ryotwari Pattadars are not ‘estates’ within the meaning of the Constitution. That there is no intelligible differentia justifying the State in treating pepper and areca plantations differently from rubber, tea and coffee plantations. That the definition of ‘family’ in the aforesaid Act is unreasonable and against natural law of persons.

Held—Lands held by ryotwari Pattadars are not ‘estates’ within meaning of Article 31 (2) of the Constitution.

That there is no intillegible differentia which would justify the State Legislature in treating pepper and areca plantations differently from rubber, tea and coffee plantations. That the definition of family in the aforesaid Act is violative of Art. 14 of the Constitution. That the provisions which are discriminatory are not severable from the rest of the Act. The whole act must be struck down in its application to ryotwari Pattadari lands.

(21)

Somawanti vs. The State of Punjab

(1963) S. C. A. 548 ; (1963) 2 S. C. J. 35 : A.I. R. 1963 S. C. 151

(1963) S. C. J. 35 : A.I. R. 1963 S. C. 151

S. 6.—Declaration that land is needed for public purpose—conclusive evidence—meaning of public purpose—court, whether can go into question—payment of token compensation out of public revenues—whether bona fide and legal—acquisition for one industry rather than of another—Discrimination :—

Facts : A notification was issued under S. 4 of L. A. Act on 18. 8. 61 and another under S. 6 on 19.8.61 for the acquisition of certain lands belonging to petitioner at public expense for a public purpose for setting up a factory for manufacture of various range of refrigerator parts. The following questions *inter alia* were raised :

- (1) whether a declaration by the Government that land was needed for a public purpose was conclusive and the court was precluded from going into the question whether the declared purpose is a public purpose or not.
- (2) whether the contribution of a token sum of Rs 100/- sanctioned to be paid out of about Rs 45000/- satisfies the requirement of law.
- (3) whether manufacture of refrigerator equipments is a public purpose.

Held : (1) That "the declaration of the Government must be relatable to public purpose" and the issue whether the declared purpose is relatable to a public purpose or not would be a justiciable issue, only if there is colourable exercise of power.

(2) That unless *mala fide* is proved contribution of a token sum would be sufficient compliance with law. It depends upon facts of each case.

(3) Manufacture of refrigerator parts is a public purpose as they help in preservation of fruits and foodstuffs.

(22)

Valjibhai Muljibhai Soneji vs. State of Bombay

(1964) 3 S. C. R. 686 : A. I. R. 1963 S. C. 1890 : 1964 S. C. J. 639

(1963)

Public purpose—Declaration by Government when final—Acquisition of land for Corporation—Compensation paid by Corporation—non-compliance with Part VII of the L. A. Act—Acquisition still bad.

Facts : Land was acquired by the then Government of Bombay for the purpose of constructing a bus depot and office etc. for the State Transport Corporation.

Points raised : (1) Purpose mentioned in the notification under S. 4 was vague and indefinite and therefore bad.

(2) That proceedings were collusive and were initiated by the State Government for benefit of the owners of the land.

(3) State Transport Corporation was not a local authority but merely a company and as provisions of Part VII of the Act were not complied with, the acquisition was bad.

Held : (1) & (2) The declaration as to public purpose by the Government is final except where it is colourable exercise of power. Thus even though the land was acquired for a corporation and not for the State the acquisition must none the less be said to be for public purpose.

(3) The State Transport Corporation is a company and certainly not a department of the Government but is a separate legal entity, therefore, money coming out of public revenue whether invested, loaned or granted to it, would change their original character and become the fund of the corporation. So provisions of Part VII must have to be complied with and as this has not been done, the acquisition is bad.

(23)

State of Punjab vs, Qaisar Jehan Begum & Anr.

1964 (1) S. C. R. 971 : A. I. R. 1963 S. C. 1604.

(11th February, 1963)

S. 18.—Limitation runs from the date of communication of the contents of the Award—Civil Court has jurisdiction to hear petition under Section 18.

Facts : On October 25, 1953 the Collector made an award in respect of land belonging to the respondents who were evacuees in the district of Gurgaon. The respondents were not notified about the acquisition and they were not present at the time of award.

On 30th September 1955 the respondents filed an application before the Collector stating that they came to know of the contents of the award on July 22, 1955 when they received compensation of Rs 96/- per acre which according to them was too low, market value being about Rs 600/- per acre. The Collector accepted the application and referred the matter under S. 18. The S. J. held that that the application dated 30th September, 1955 for reference is time barred. On appeal to High Court, it directed the S. J. to deal with the reference on merits on the view that the Civil Court is precluded from going into questions other than matters specified in S. 18 of the Act. The High Court did not go into the correctness of the decision on question of limitation. On appeal by special leave—

Held: Assuming that the Civil Court could go into the question of limitation, the respondents who were entitled to notice S. 12 sub-Sec. 2 of the Act had admittedly received no notice nor were they present at the time of the award and therefore neither Cl.(a) nor the first part of Cl.(b) of the proviso to S. 18 applied.

The parties concerned must have knowledge of the essential contents of the award, though the petitioners may know of the award.

The petitioners are entitled to a period of limitation of six months contemplated in second part of Cl.(b) of S. 18

As regards the question whether a Civil Court has jurisdiction to go into the question of limitation in a reference under S. 18 of the Act, there is conflict of decisions, but the Supreme Court both in the present case as also in the case of *Raja Harish Chandra Singh vs. Dy. L. A, Officer (1962) 1 S. C. R. 676*, have proceeded on the assumption that the Civil Courts have jurisdiction.

(24)

P. Vajravelu Mudaliar vs. Spl. Dy. Collector, Madras

A. I. R. 1965 S. C. 1017 : 1965 (1) S. C. R. 614 :
1965 (1) S. C. A. 396.

Art. 31-A of the Constitution would apply only to a law made for acquisition of any 'estate' or any right therein if such acquisition is concerned with agrarian reforms.—The Land Acquisition (Madras Amendment) Act XXIII of 1961 does not attract Art. 31-A of the Constitution.—Neither the principles prescribing just equivalent nor the just equivalent can be questioned on ground of inadequacy of compensation.—If the compensation is illusory or the principles prescribed are irrelevant to the value of property, the law is bad.—The Madras Amendment Act XXIII of 1961 is void under Art. 14 of the Constitution.

(Extract)—“Therefore a more reasonable interpretation is that neither the principles prescribing the ‘just equivalent’ nor the ‘just equivalent’ can be questioned by the court on the ground of inadequacy of the compensation fixed or arrived at by the working of the principles,

To illustrate, a law is made to acquire a house, its value at the time of acquisition has to be fixed ; there are many modes of valuation namely estimate by an engineer, value reflected by comparable sales, capitalisation of rent and similar others. The application of different principles may lead to different results. The adoption of one principle may give a higher value and the adoption of another may give a lesser value. The Court cannot obviously say that the law should have adopted one principle and not the other, for it relates only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art 31(2) of the Constitution. If a law says that though a house is acquired, it shall be valued as an agricultural land or that though it is acquired in 1950 its value in 1930 should be given or though 100 acres are acquired compensation shall be given only for 50 acres, the principles do not pertain to the domain of adequacy but are principles unconnected to the value of property acquired. In such cases the validity of the principles can be scrutinised. The law may also prescribe a compensation which is illusory ; it may provide for the acquisition of property worth lakh of rupees for a paltry sum of Rs. 100/-. The question in that context do not relate to the adequacy of compensation for it is no compensation at all. The illustrations given by us are not exhaustive. There may be many others falling on either side of the line. But this much is clear, if the compensation is illusory or if the principles prescribed are irrelevant to the value of property at or about the time for acquisition, it can be said that the Legislature committed a fraud on power and therefore the law is bad. It is a use of protection of Art. 31 in a manner which the Article hardly intended." Thereafter their Lordships considered whether the Amending Act was made in contravention of Art. 31(2) of the Constitution and held "that the Amending Act does not contravene Art. 31(2) of the Constitution but held on question of discrimination that the amending Act clearly infringes Art. 14 of the Constitution. It may be noted that the contention, that the compensation was illusory as being irrelevant to the principles laid down for fixing compensation was raised, and their Lordships had to consider the point and negative the contention on the facts of the case on the above reasonings holding that there is no irrelevancy in the application of Art. 31(2) of the Constitution and which is not contravened.

Notes

Although this part of the judgment is not required to be overruled being negated on the facts, still the guiding principle of the above reasoning which was the basis of above finding, would not be an obiter. Supposing the irrelevancy is proved from facts of the case, then the finding would be otherwise and then surely the above observations would not be obiter. But the Supreme Court in *State of Gujarat V. Shantilal* held that the

above observations are obiter but at the same time it reaffirmed the view that the principles for determining compensation can be challenged if (i) it is illusory or (ii) can in no sense be regarded as compensation or (iii) it is irrelevant to compensation but not on the plea of inadequacy only.

(25)

R. L. Aurora vs. State of Uttar Pradesh.

A.I.R. 1964 S.C. 1230 : 1965 (1) S.C.A. 12.
(1964).

In *R.L. Aurora V. State of Uttar Pradesh*, judgment dated 14th Feb. 1964 where a petition under Art. 32 of the Constitution, as a sequel to the judgment of the Supreme Court reported in *R.L. Aurora Vs. State of U.P.* (1962) Sup. 2 S.C.R. 149 : (A.I.R. 1962 S.C. 764), was filed. The previous appeal (1962) was allowed on December 1, 1961 and the last notification under S. 6 was quashed. On July 20, 1962 the Land Acquisition (Amendment) Ordinance was promulgated. By that Ordinance sections 40 and 41 were amended and certain acquisition of land made before the date of the Ordinance were validated notwithstanding any judgment, decree or order of any Court. The said Ordinance was replaced by the Land Acquisition (Amendment) Act No. 31 of 1962 and which was made retrospective from July 20, 1962 the date on which the Ordinance was promulgated. The present petition challenged the validity of the amendments to Secs. 40 and 41 and also the validity of S. 7 of the Amendment Act by which certain acquisitions made before July 20, 1962 were validated. It was argued with some force that all that cl. (aa) of S. 40 (1) requires is that the company for which land is being acquired should be engaged or about to be engaged in any industry or work which is for a public purpose and it is not required that the *building or work*, for the construction of which land is acquired should be for such public purpose. So it contravenes Art. 31 (2) and 19 (1) (f). Their Lordships held that the setting in which cl. (aa) appears and in the circumstances in which it came to be enacted, a literal and mechanical construction is not the only construction of this clause and that there is another construction which is a better construction and which is that the public purpose of the company is also implicit in the purpose of the building or work which is to be constructed for the company and it is only for such work or building which subserves the public purpose of the company that acquisitions under cl. (aa) can be made. It is well settled that if certain provisions of law construed in one way will be consistent with the Constitution and if another interpretation would render them unconstitutional, the court would lean in favour of the former construction. The second being better construction, the cl. (aa) cannot be said to contravene Art. 31 (1), for public purpose required therein is present where land is required for the construction of a building or work which must subserve

the public purpose of the industry or work in which the company is engaged. The clause so interpreted is not unconstitutional and the amendments are valid.

It was further held that Sn. 7 of the Amendment Act validates such acquisitions in which property has vested absolutely in Government either under Sn. 16 or Sn. 17 (1) of the Land Acquisition Act. This deeming provision only provides that where the purpose does not fall within clause (a) and (b), it shall be deemed to fall under cl. (aa) and to be judged in accordance therewith. If in fact the purpose of any acquisition made before July 20, 1962, is such as does not fall within cl. (aa) the deeming provision would be of no avail. The validity under Sn. 7 is not absolute, it is conditioned by the fact that it will be as valid as if cl. (aa) was in force so that if it could not be valid even if cl. (aa) was in force and could not be justified under the terms of that clause, the validity conferred by Sn. 7 will not attach to it.

It was further held that acquisition for the purpose of cl. (aa) of Sn. 40 (1) can only be made for a Government company or a public company and cannot be made for a private company or an individual. The intention is that private individuals and private companies consisting of few private individuals should not have the advantage of acquiring land even though they are engaged in industry which may be for a public purpose.

(26)

Shyam Behari & Ors. vs. State of Madhya Pradesh & Ors.

1965 (1) S. C. A. 588 : A. I. R. 1965 S. C. 427,

(Decided on 3.2.64)

Acquisition for a Company by a declaration not specially stating that it is acquired for Company—Declaration void—in case of company, the compensation to be paid wholly by company—in case of public purpose, wholly or by partly Public Funds.

Facts : On July 8, 1960, a notification under S. 4 of the L. A. Act 1894 was issued stating that certain lands were required for a public purpose, namely, "The construction of buildings for godowns and administrative office". This notification was issued at the instance of the Premier Refractories of India (Private) Ltd. which was a company. An enquiry under S. 5A of the Act and thereafter a notification under S. 6 was issued on 3.12.1960 that the Government was satisfied that the lands were required for a public purpose as already stated. It was not stated that the lands were required for a company. It appeared however that no part of the compensation payable for the land was to come out of public funds. A fresh notification was issued on April 19, 1961, stating that the lands were required for a public purpose, namely, "for the Premier Refractory factory and work connected therewith."

Held: That both the notifications were bad in law and must be quashed in as much as it was not stated that the lands were required for a company.

No declaration under S. 6 of the L. A. Act 1894, for acquisition of public purpose can be made unless either the whole or part of the compensation for the property to be acquired is to come out of public revenues or some fund controlled or managed by a local authority. In case the land is needed for a Company, the entire compensation is to be paid by the company and the notification must contain that the land is required for a company and no declaration can be made declaring that the land is required for a public purpose for such a declaration requires that either wholly or in part, compensation must come out of public revenues or some fund controlled or managed by a local authority.

The appeal was dismissed over-ruling the decision of Madhya Pradesh High Court in *Shyam Behary vs. The State of Madh.* Pra. A. I. R. 1962 Madh. Pra. 80 and its finding that a 'notification under S. 6 need not indicate as to what is actual public purpose and that satisfaction of the Government that it was needed for a public purpose although it was really needed for a company, would be sufficient', is no longer good law.

(27)

Jeejeebhoy, N. B. vs. Asst. Thana Prant, Thana & others.

1965 (2) S. C. A. 457 : A. I. R. 1965 S. C. 1096.

Land Acquisition (Bombay) Amendment Act, 1948—Government of India Act, 1935—Sec. 299—Compensation, meaning of—"just equivalent"—Constitution of India, Art. 51 (5), Art. 31 (A)—Bombay Amendment Act whether void—Act whether 'existing' law.

Fact: The land Acquisition (Bombay) Amendment Act, 1948, provided that if land was acquired for a housing scheme the person whose land was acquired would not be entitled to the market value of the land at the date of the publication of the notification but only the market value of the land at the date of the notification or on January 1, 1948 whichever was less and he would not be entitled to an additional sum of 15 per cent on the market value as provided in the Act. This Act was challenged on the ground that it contravened Sn. 299 of the Government of India Act, 1935, and was therefore void. It was contended, on the contrary, that the word 'compensation' in Sn. 299, aforesaid, did not mean "just equivalent" of what the owner had been deprived of and therefore did not contravene that section, it was further contended that the impugned Act was an "existing law" within Art. 31 cl. 5 of the Constitution and was therefore saved by that clause or at any rate it was saved by Art. 31-A.

Held : (i) That the word "compensation" in Section 299 of Government of India Act, 1935 has the same meaning as is given to that word in Art. 31 of the Constitution, viz., the "just equivalent" of what the person whose land was acquired had been deprived of. As the Land Acquisition (Bombay) Amendment Act, 1948 did not provide for such "just equivalent", the Act was void *ab initio*.

(ii) That the impugned Act being void *ab initio*, was not an existing law within Art. 31 cl. (5) of the Constitution and was not saved by that clause.

(iii) That Art. 31A cannot have any bearing in the context of an Act which had no legal existence at the date when the Constitution came into force and could not therefore apply to the impugned Act.

(28)

Sarju Prasad Saha V. The State of U. P. and others.

1965 (II) S. C. J. 411 : A. I. R. 1965 S. C. 1763.

(1965)

L. A. Act (I of 1894), Sec. 5A—Provisions if can be directed not to apply in exercise of powers under Sec. 17(4) to lands acquired under Sec. 17(1-A) inserted by U. P. Amendment Act (XXII) of 1954.

Held : Sub-section (1A) of Sn. 17 of the Land Acquisition Act as introduced by U. P. Act (XXII of 1954) has the effect of only accelerating the taking of possession which normally can take place after the award has been made under Sn. 11 in the case of land other than waste or arable, in the circumstances under the condition mentioned in sub-sn. (1). But the sub-sn. 1A does not amend sub-sn. (1) so as to include within that sub-sn. land other than waste or arable. Therefore when sub-sn. (4) of Sn. 17 was not amended by the U. P. Legislature to include sub-sn. 1-A as introduced by it, it can only apply to waste or arable land mentioned in sub-section (1). Sections 17 (1) and 17 (4) are independent of each other in the sense that an order under the former one does not necessarily require an order under the latter. Similarly Section 17 (1-A) must be independent of Section 17 (4) and an order under Sn. 17 (1A) would not necessarily mean that an order under Sn. 17 (4) must be passed. The sub-sn. (4) cannot be applied to sub-section 1-A,

The notification dated 10th Nov. 1960 declaring that Section 5-A shall not apply to the acquisition in the instant case (not being waste or arable land) was invalid and the notification under Sn. 6 in invalid.

(29)

Girdharlal Amratlal Shodan vs. The State of Gujarat.

1966 (II) S. C. J. 528.

(28. 2. 1966)

First notification under S. 6 cancelled as being invalid and a second notification was issued—whether it is lawful.

A notification u. S. 4 of the L. A. Act was issued stating that certain land was likely to be needed for a public purpose and after enquiry under S. 5A a notification under S. 6 was issued. Later realising that the notification under S. 6 was not in accordance with law, the Government cancelled it, and issued a fresh notification under S. 6. On the question of validity of the second notification.—

Held : “the second notification was validly issued, on the grounds *inter alia* that where a notification under S. 6 is incompetent and invalid, the Government may treat it as ineffective and issue a fresh notification. The cancellation of the notification (first one) was no more than a recognition of its invalidity. There is nothing in Sn. 48 which precluded the Government from treating the earlier invalid notification as ineffective and issuing in its place an effective notification under Sn. 6. Where the notification under S. 6 is lawful a question may well arise whether the Government can cancel it without withdrawing from the acquisition, as provided for in Sn. 48”.

(30)

(1) **State of West Bengal & Ors.** (2) **Ramkrishna Mission v. P. N. Talukdar & Ors.**

A- I. R. 1965 S. C. 646 ; (1965) I S. C. A. 593

Hotel buildings and playgrounds for students are public purposes but construction of staff quarter is not—no satisfaction of Government if there is no material on record—extent of land acquired unknown—requirements of individuals are not that of public—acquisition void.

Facts : In October 1960, the Ramkrishna Mission applied to the Land Acquisition Collector for acquisition of certain lands of Narendrapur for construction of (1) playgrounds, (2) hostels for students, and (3) staff quarters and which were alleged to be public purposes—Proceedings were taken under Sn. 5A of the Act and a further enquiry was made under Sn. 40 of the Act and thereafter a notification under S. 6 was issued on Oct. 4, 1962. In the meantime the Land Acquisition (Amendment) Act was passed by which Sections 40 and 41 had been amended by insertion of cl. (aa) in

S. 40 and cl. (4A) in S. 41. P. N. Talukdar as owner of said plot moved petition under Art. 226 of the Constitution in High Court, challenging validity of the acquisition but the same was dismissed. Thereafter appeals were preferred which were allowed by High Court. Then the present appeals were filed. The main contentions were (1) that the land acquisition proceedings were bad because the agreement between the State and the Mission was invalid as the terms on which the public was entitled to use the work were not set out in the agreement, (2) that it was not open to the Government to give consent on the combination of the grounds, provided in cl. (aa), and (b) of S. 40(1), (3) that the construction of staff quarter is not a public purpose, (4) that consent and satisfaction of the Government on question of its public purpose were not justified.

Held: that on materials on record the hostel building and the playgrounds come within cl. (b) of S. 40(1) but this construction of staff quarters does not, further it does not appear that any material was supplied to Government either, nor does the agreement show that this aspect of the matter was considered by the Government and the extent of land required for that purpose is also unknown. Therefore the whole of the notification must be struck down. Requirements of individuals are not requirements of public.

(31)

I. C. Goloknath and Others vs. The State of Punjab.

A. I. R. 1967 S. C. 1643 ; (1967) 2 S. C. R. 762

(27th February 1967)

Parliament has no power to abridge Fundamental rights.—The Parliament of India has no power to take away or abridge any of the fundamental rights guaranteed by the Constitution by way of Constitutional Amendments. These rights are given a transcendental position and kept beyond the reach of parliamentary legislation. The Constitution (First, Fourth and 17th) Amendment Acts, protecting legislation relating to the acquisition of property by the State from judicial review on the ground of violation of fundamental rights, was beyond parliamentary competence. Great social and economic changes, however, had been made on the basis of these laws and having regard to the requirements of justice the court would limit the effect of its judgment to future legislations only. The existing amendments to the Constitution were therefore declared valid. The Punjab Security of Land Tenures Act 1953 and the Mysore Land Reforms Act 1962 are valid.

The Constitution of India as framed by the Constituent Assembly recognised the right to property under Article 19 and permitted acquisition by the State subject to proper legal process and payment of adequate compensation. When the Patna High Court struck down the Land Reforms Act of Bihar as violative of these rights, the Constitution (First

Amendment) Act, 1961 followed. It validated certain enactments, protected the legislation against attack on the ground of fundamental rights and placed thirteen Acts of the State Legislatures relating to acquisition of estates in Schedule Nine which was immune from challenge. The Fourth Amendment Act took the number of statutes in the schedules to 20 and the Seventeenth Amendment Act to 64.

The Punjab and Mysore enactments relating to the acquisition of estates, were included in this schedule by the Seventeenth Amendment. These Constitutional amendments were challenged in the Supreme Court in two earlier cases. The main argument then advanced was that Article 13 of the Constitution prohibited Parliament from making any law taking away or abridging the fundamental rights. Since the amendments were effected by a law, they were beyond the competence of Parliament and hence void.

The view was rejected by the court in the cases of *Shankari Prasad Singh Deo vs. Union of India & State of Bihar*, 1952 S. C. R. 89, and *Sajjan Singh vs. The State of Rajasthan* (1965) I S. C. R. 933 decided in 1952 and 1965 respectively. The Court accepted the argument that the legislative process involved in making a constitutional amendment was not "law-making". Hence Article 13 did not place a fetter on the power of Parliament to amend any part of the Constitution. The petitioners in the present cases who were landlords affected by the Punjab and Mysore enactments challenged the correctness of these views and the validity of the amendments to the Constitution.

The Chief Justice of India, giving judgment for himself and four other judges of the Supreme Court, dismissed the petitions by Golok Nath and Others against the State of Punjab and summarized his main conclusions as follows :

1. The power of Parliament to amend the Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article 368 which only deals with procedure. Amendment is a legislative process.
2. Amendment is 'law' within the meaning of Article 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III governing fundamental rights, it is void.
3. The Constitution (First Amendment) Act 1951, Constitution (Fourth Amendment) Act, 1955, and the Constitution (17th Amendment) Act, 1964 abridge the scope of fundamental rights. But on the basis of earlier decisions of this court, they were valid.
4. On the application of the doctrine of 'prospective over-ruling' this decision will have prospective operation only, and therefore the said amendments will continue as valid.
5. Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.
6. As the Constitution (17th Amendment) Act holds the field the validity of the Punjab Security of Land Tenures Act, 1953 and the Mysore Land Reforms Act, 1962 challenged in these proceedings can-

not be questioned on the ground that they offend Articles 13, 14 or 31 of the Constitution.

The Chief Justice, giving his reasons in support of the judgment, said that a correct appreciation of the scope and place of fundamental rights in the Constitution would give the right perspective for solving the problem presented to the Court. The fundamental rights to equality, freedom and property were embodied in Part III of the Constitution. After declaring the fundamental rights the Constitution enjoins the State by Article 13(2) not to make any law which takes away or abridges these rights and declares such laws to be void.

While recognising the immutability of fundamental rights the Constitution provides for their modification in the social interest and even suspension during an emergency, Both Mr. Jawharlal Nehru and Dr. Ambedkar were of the view that the fundamental rights could not be amended. In this background and upon the interpretation of Article 368 and 13(2) of the Constitution, His Lordship felt that the fundamental rights could not be amended by Parliament.

The petitions were heard by the Chief Justice, Mr. Justice Wanchoo, Mr. Justice Hidayatullah, Mr. Justice Shah, Mr. Justice Sikri, Mr. Justice Bachawat, Mr. Justice Ramaswami, Mr. Justice Shelat, Mr. Justice Bhargava, Mr. Justice Mitter and Mr. Justice Vaidialingam.

(32)

Raghubans Narain Singh vs. U. P. Government.

1967 (II) S. C. J. 214 : 1967 (I) S. C. R. 489.
(1967)

Grove land—method of valuation on annual value of produce not adequate—all existing advantages and potential possibilities to be considered excluding future prospect for carrying out any scheme.

Sections 11, 18, 23 & 28 of L. A. Act : *Held* (1) That High Court was wrong in disbelieving the evidence of the Deputy Collector as the same was not challenged either on the ground that his offer was not *bonafide* or that he offered to buy under compulsion or under any special circumstances. (2) It is wrong in law not to consider the potential value of the land as a building site on the face of the evidence as to the town's recent development. (3) Valuation on basis of annual crop value should not be resorted to at least for two reasons, (a) that the owner may not have put his property to its best use or in the most lucrative manner, (b) in a case like the present the grove had not yet started giving maximum yield, (c) valuation of land on annual value of produce should be resorted to only when no other alternative method is available. *Government of Bombay vs. Merwanji Muncherji*, 10 Bom. L.R. 937 and *Governor-General-in-Council vs. Ghiasuddin*, 30 P.L.R. 212 referred to. (4) There is nothing wrong in permitting the appellant to raise a pure question of law e. g.

construction of S. 28 as to the rate of interest. (5) Once the discretion as to whether interest should be granted or not under Section 28, is exercised, there is no further discretion and the interest, if awarded, has to be at the rate of six per cent per annum.

(33)

Raja Anand Brahma Shah vs. The State of Uttar Pradesh.

1967 (II) S. C. J. 830 : (1967) 1 S. C. A. 591 : A. I. R. 1967 S. C. 1081
(1967)

L. A. Act—Sec. 6 (3), 17 (1) and 17 (4)—colourable exercise of power—arable and waste lands—finding of fact—when court can interfere in a Writ of Certiorari—owner of surface land is prima facie owner of sub-soil rights in absence of any reservation.

“The declaration made by the State Government in notification under Sec. 6 (1) of the Land Acquisition Act, that the land is required for a public purpose, is conclusive subject to one exception, namely, in case of colourable exercise of power, the declaration is open to challenge at the instance of the aggrieved party. If it appears what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all, the action of the Government would be colourable as being outside the power conferred on it by the Act and its declaration under S. 6 will be a nullity.” (*Somawanti's case and Jaichand Lal Sethia vs. State of West Bengal* (1967) 2 S. C. J., 173 ; A.I.R. 1967 S. C. 483),

In the context of section 17 (1) of the Land Acquisition Act the expression “arable land” must be construed to mean “lands which are mainly used for ploughing and for raising crops” and therefore the forest land will not be arable land. The expression ‘waste land’ means ‘land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation thereon and this will also not apply to forest land’.

“It is well established that where the jurisdiction of an administrative authority depends upon a preliminary findings of fact, the High Court is entitled in a proceeding of writ of certiorari to determine, upon its independent judgment, whether or not the finding is correct.” (*R. V. Shoreditch Assesment Committee, (1910) 2 K. B. 859 ; White and Collins vs. Minister of Health (1939) 2 K. B. 838*).

Prima facie the owner of the surface land is entitled *ex jure* to everything beneath the land in the absence of any reservation in the grant, minerals necessarily pass with the rights to the surface. In other words, a transfer of the right to surface conveys right to the minerals underneath unless there is an express or implied reservation in the grant.”

“When neither parties knew undiscovered minerals underneath the land and the idea of reservation never entered their minds, it cannot be held that there was any implied reservation in the grant. (*Ranjit Singh vs.*

Kalidasi Debi (1917) L. R. 44 I. A. 117 and *Hari Narayan Singh vs. Sriram Chkravarty* (1910) L. R. 37 I. A. 136, referred to)

"In the instant case in the Sanads granting the Pargana Agori to the ancestors of the appellant zamindar, there is no reservation of mineral rights in favour of the Government. In effect the grant in the Sanad is a grant of lands and everything appertaining thereto and the appellant is the owner of all minerals and sub-soil rights of Pargana Agori. The Mirzapore Store Mahal Act was meant only for regulating quarrying of building stones and was not meant to affect the sub-soil rights. (*Durga Prasad Singh vs. Braja Nath Basu* 39 I. A. 133 and *Sashi Bhusan Misra vs. Jyoti Prasad Singh Deo*. 44 I. A. 46 referred to.)

(34)

Ganga Bishnu Swaika vs. Calcutta Pinjrapole Society

A. I. R. 1968 S. C. 615.

(1968)

Land Acquisition Act (1894) Ss. 6, 5A, 40 and 41 (as amended by Act 38 of 1923)—*Declaration under S. 6—Satisfaction of Government need not be stated—Effect of amendments stated—concurrent findings of fact.*

"There being no statutory forms and S. 6 not requiring the declaration to be made in any particular form, the mere fact that the notification issued under S. 6 does not ex-facie show the Government's satisfaction, assuming that the words "it appears" used in the notification do not mean-satisfaction, would not render the notification invalid or not in conformity with S. 6." (I. L. R. 33 Cal. 36 rel. on). Although the satisfaction is a condition precedent, it is immaterial whether such satisfaction is so stated or not in the notification. For even if it is so stated, a person interested, can always challenge as a matter of fact that the Government was not actually satisfied. In such a case the Government would have to satisfy the court by leading evidence.

"Concurrent findings of courts below on the question of malafides or mis-use of power by the Government, is entirely a question of fact and cannot be agitated in appeal before Supreme Court."

"The amendment of S. 6 by Act 38 of 1923 which substituted the words "when the Local Government is satisfied" for the words "when it appears to the local Government" was considered necessary because the same Amendment Act inserted S. 5-A for the first time in the Act and also amended the Sections 40 and 41 and these amendments show that even prior to the 1923 Amendment Act whenever the Government was required by the Act to consider a report, the legislature had used the word 'satisfaction' on the part of the Government. Since the Amendment Act 1923 introduced S. 5-A requiring the Collector to hold an enquiry and to make a report and required the Government to consider that report and the

objection dealt with in it, the legislature presumably thought it appropriate to use same expression which it had used in Ss. 40 and 41 where also an enquiry was provided for and the Government had to consider the report of the officer making such enquiry before giving its consent. The fact that S. 5A enquiry was held and objections were filed and heard, the fact that Additional Collector had recommended the acquisition and had sent his report to that effect and Government thereafter issued S. 6 notification, would, in the absence of any evidence to the contrary, show that the condition precedent as to satisfaction was fulfilled."

(35)

Sunderlal vs. Paramsukhdas & ors.

1968 (1) S.C.J. 685 : A.I.R. 1968 S.C. 367
(1968)

L. A. Act (1 of 1894) Sections 3 (b), 20 (b), 21 and 54—attaching creditor not claiming an interest in the land acquired but claims an interest in the compensation—if 'person interested'—Such person seeking to be impleaded in reference proceedings under Sec. 18—Refusal by Court—Revision to High Court, if lies.

Held : It is not necessary that in-order to fall within the definition of "Person interested" a person should claim an interest in the land acquired. A person becomes a 'person interested' if he claims an interest in compensation to be awarded. An attaching creditor is a person interested.

The order of the civil judge in rejecting an application under O. 22 r. 10 C. P. C. read with Sn. 151, for being added as a party, is not an award within Section 54 of the Act, so no appeal against the order of refusal lies.

If no appeal lay, then the revision application to High Court is competent.

(36)

Union of India vs. Kamalabai Harjibandas Parekh

1968 (1) S.C.J. 16 : A.I.R. 1968 S.C. 377
(17. 6, 1968)

Requisition and Acquisition of Immovable Property Act (XXX of 1952), S. 8 (3) (b) and the words "whichever is less" are ultra vires of Articles 31 (2) of the Constitution—Compensation.

Held : Cl (b) of sub-section (3) of Sn. 8 leaves the arbitrator no choice of assessing the value in terms of cl. (a) even if he was of opinion that

the two modes fixed thereunder afforded a just equivalent of the property to its owner. He has no choice or freedom of considering the two modes laid down in sub-section (3) and accepting the one which he thought fair. Requirements of Article 31 (2) of the Constitution are not satisfied. Accordingly Section 8 (b) (3) and the words "whichever is less" are *ultra vires* of Article 31 (2) of the Constitution.

State of West Bengal vs. Bela Banerjee, (1954) S. C. R. 558 relied on.

(37)

State of Gujarat vs. Shantilal Mangaldas & Ors.

A. I. R. 1969 S. C. 634 : (1969) I. S. C. A. 461 : (1969) 2 S. C. J. 322.

(1969)

Art. 31 of the Constitution as amended (by Constitution Fourth Amendment Act 1955)—Scope of Cl. (1), (2) and 2A—Principles for determining validity of law, regarding compulsory acquisition or requisition is not justiciable and cannot be challenged on ground that it is not just compensation—Union of India v. Metal Corporation of India, A. I. R. 1967, S. C. 637 : (1967). 1 S.C.R. 255 overruled—Bombay Town Planning Act (27 of 1955) Sections 53 and 67 do not infringe Art. 14—compensation need not be in terms of money alone but may be by allotment of other property—adequacy of compensation is not justiciable—P. Vajravelu Mudaliar's case interpreted with restriction.

Facts : By a resolution dated April 18, 1927, the Borough Municipality of Ahmedabad which was a local authority declared its intention to make a town planning scheme known as "The City Wall Improvement Town Planning Scheme" in respect of a specified area. A plot of land belonging to 1st respondent Shantilal was covered by the Scheme. After sanction by the State Government the original plot was reconstituted into two plots viz., No. 176 and 178, one was reserved for the 1st respondent and the other for the Municipality and for constructing quarters for their employees. On August 23, 1957 the Town Planning Officer informed the 1st respondent that Rs. 25,411 were awarded as compensation for his plot No. 178 that was meant for the Municipality. The scheme came into operation in September 1, 1965. Plot No. 176 was also reserved for allotment on reconstitution to the 1st respondent. Under the Bombay Act all rights in the original plot which have been re-constituted i.e., in any way altered or separated or amalgamated with other plots belonging to other owners and combined into one or several single plot and which plot or plots may be allotted to any person or persons by the Town Planning Officer. The owner who is deprived of his land has to be compensated and the owner who is allotted a re-constituted plot has to contribute towards the scheme after adjustments according to the market-value of each plots. But the land is valued not on the date of extinction of owner's interest but on the date of declaration of intention to make the

scheme. In this case the declaration of intention to make a scheme was made in 1927 and the final scheme was published extinguishing the interests of the owner in 1957. There was a lot of difference in the market values of lands in the two said periods there being lapse of 30 years. Apparently the petitioner Shantilal was aggrieved because of this difference and inadequacy of valuation and compensation in respect of said plots. The petitioner Shantilal filed a writ petition in the High Court of Gujarat challenging the validity of Art 27 of 1955 and acquisition of plot No. 178 on the plea that the Act infringed his fundamental rights guaranteed by Act. 31(2) of the Constitution and that S. 53 was *ultra vires*, on the following grounds *inter alia* :

(1) That the scheme for calculating compensation is bad as there is no provision for compensation of entire land of the owner, the Act specifies no principles on which compensation is to be determined.

(2) That payment of compensation in money is not provided even in respect of land appropriated to public use. That the scheme for recompense of loss is not a scheme providing for compensation.

(3) That there is no vesting of the original plots in the local authority nor transfer of the rights in the re-constituted plots.

(4) That provision for giving, the value of the land, not on the date of extinction of interest of owner (1957) but on the footing of the value prevailing at the date of declaration of intention to make the scheme (1927) is not a provision for payment of compensation, etc. The High Court of Gujarat upheld the contentions of the petitioner and declared S. 53 of the said Act *ultra vires*. On appeal by the State their Lordships of the Supreme Court held :—

(1) The Constitution (Fourth Amendment) Act passed on 27. 4. 55 provides in effect in the cl. (2) of Art. 31 that adequacy of compensation is not justiciable. If the quantum of compensation fixed by the Legislature is not liable by virtue of Art. 31(2) of the Constitution, to be canvassed before the Court on the ground that it is not a just equivalent, the principles specified for determination of compensation will also not be open to challenge on the plea that the compensation determined by the application of said principles is not a just equivalent.

(2) It does not mean however that something fixed or determined by the application of specified principles which is illusory or can in no sense be regarded as compensation, must be upheld by the courts, for to do so, would be to grant a charter of arbitrariness and permit a device to defeat the constitutional guarantee.

(3) Principles may be challenged on the ground that they are irrelevant to the determination of compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation.

(4) In this case the principles were not irrelevant to the determination of compensation and the compensation was not illusory.

(5) Art. 31 guarantees that the law providing for compulsory acquisition must provide for determining and 'giving' compensation for the property acquired. The expression 'compensation' is not defined in

the Constitution. Under the Land Acquisition Act compensation is always paid in terms of money. But that is no reason for holding that compensation must always be in terms of money. In ordinary parlance 'compensation' means anything 'given' to make things 'equivalent'. Art. 31 (2) provides for the said word 'given'. If it were to be in terms of money alone, the expression 'paid' would have been more appropriate. A law which provides for making satisfaction to an appropriated owner by allotment of other property may be deemed to be a law providing for compensation.

(6) The fact that considerable time has elapsed since the declaration of intention to make a scheme and extinction of interest of owner cannot be a ground for declaring the section *ultra vires*, although it is right to say that compensation cases should not be allowed to drag on for a long time because then the compensation paid has no relevance to exact point of time when the extinction has actually taken place.

(7) One of the effects of the Constitution (Fourth Amendment) Act 1955 which came into force on April 27, 1955, is that where acquisition was made pursuant to the statutes enacted before April 27, 1955, the law declared in Mrs. Bela Banerjee's case (1954 S.C.R. 558 : A.I.R. 1954 S.C. 170) and Subodh Gopal Bose's case, (1954 S.C.R. 587 ; A. I. R. 1954 S.C. 92) continued to apply because at that time there was no amendment in Cl. (2) of Art. 31. (thereby saying by implication that these two cases do not apply to statutes enacted after the 4th Amendment i. e., 27.4.55).

(8) In *State of Madras vs. D. Namasivaya Mudaliar* (1964) S.C.R. 936 ; A.I.R. 1965 S.C. 190, The Madras Lignite (Acquisition of Land) Act 1953 was declared invalid as infringing Art. 31 (2) of the Constitution before it was amended.

(9) In N. B. Jeejeebhoy's case (1965) 1 S.C.R. 636 : (A. I. R. 1965. S.C. 1906) The court dealt with a pre-constitution Statute.

(10) In *Union of India vs. Kamlabai Harjivandas Parekh* (1968) 1 S. C. R. 463 : A. I. R. 1968 S. C. 377 in which the Requisitioning and Acquisition of Immovable Property Act 1952 was declared void as infringing Art. 31 (2) of the Constitution was also a pre-amendment Act (Constitution 4th Amendment).

(11) In P. Vajravelu Mudaliar's case (1965) 1. S. C. R. 614 : A. I. R. 1965 S. C. 1017, the court held that the principles laid down by the impugned statute were not open to question. That was sufficient for the purpose of the decision of the case and the other observations were not necessary for deciding that case and cannot be regarded as a binding decision. [Hidayetullah C.J. (one of the judges in Vajravelu's case) says in this case. "It is certainly out of question that the adequacy of compensation (apart from compensation which is illusory or proceeds upon principles irrelevant to its determination) should be questioned after amendment of the Constitution. I am in agreement that the remarks in P. Vajravelu's case must be treated as obiter and not binding on us"].

(12) *Union of India v. Metal Corporation of India Ltd.* (1967) 1 S. C. R. 255 : 1967 A.I.R. 637 was wrongly decided and overruled,

Notes

But it is interesting to note the effect of Golak Nath's case in this background. According to Golak Nath's case the Constitution First, Fourth and Seventeenth Amendments were declared void with prospective effect from date of its decision i.e., 27-2-67. Acts or transactions under past Acts already existing on said date will remain valid but there can be no further abridgement of fundamental rights either by a new law enacted after that date or by any subsequent amendment in the law existing on said date or by including any Act in the 9th Schedule. The effect is that the new laws enacted after 27. 2. 67 shall have to conform to Articles 19, 31, 31 (2) of the Constitution as they originally stood unamended, or in other words, both the questions of principles as also the adequacy of compensation will be justiciable. The Act concerned in Shantilal's case is the Bombay Town Planning Act No. 27 of 1955. It is neither a pre-amendment Act nor an Act included in the 9th Schedule but still it is a law existing at the date of Golak Nath's decision and so the Constitution as amended applied to it. But if it was a law subsequent to 27. 2. 67 then the decision in Shantilal's case, it seems, would not apply and both the questions of principle and the adequacy would be justiciable.

Besides, Shantilal's case has not overruled Vajravelu's case, on the other hand it re-affirmed the view that the principles for determining compensation can be challenged if "something fixed or determined by the application of specified principles which is illusory or can in no sense be regarded as compensation or it is irrelevant to compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation."

Further the observation in Shantilal's case that *Bela Banerjee's* case and *Subodh Gopal's* case apply only to Statutes enacted prior to the Constitution 4th Amendment as Art. 31 (2) was not amended at that time, thereby saying by implication that they do not apply to Statutes enacted after the 4th Amendment dated 27.4.1955. But it is to be noted that in *Golak Nath's* case the 4th Amendment of the Constitution was held *ultra vires* with prospective effect i. e., from 27.2.67. The effect seems to be therefore, is, that those two cases will apply not only to Statutes enacted before 27.4.1955, but also to all Statutes enacted after 27.2.1967, but not to Statutes existing in between the said period ?

(38)

Rustam Cavasjee Cooper vs. Union of India & Ors.

Banking Companies (Acquisition And Transfer of Undertakings)
Act No. 22 of 1969.

(Supreme Court Judgment dated 10. 2. 70)

The Supreme Court by a 10 to 1 majority declared the Banking Companies (Acquisition And Transfer of Undertakings) Act 1969 providing for

Nationalisation of 14 major Banks, void and unconstitutional on the ground that it violated Articles 14, 19 and 31(2) of the Constitution of India.

1. The preliminary point raised by the Government was that the petition was not maintainable because no fundamental right of the petitioners was directly impaired by the legislation.

Held : That the rights of the petitioner were affected by the legislation, accepting the contention of the petitioners that in consequence of hostile discrimination practised by the State, the value of his investments in the shares was reduced, his right to receive dividend had ceased and as a shareholder he was deprived of his right to carry on business through the agency of the Company, so the petition was maintainable.

On petitioners contentions :—

2. That the Ordinance must be struck down on the ground that the conditions precedent for its valid promulgation as required by Art. 123 (emergency) did not exist—

Held : That since the Ordinance was repealed by the subsequent Act, the question was academic and the court need not express any opinion on it.

3. That the Act was not within legislative competence of the Parliament, in any event to the extent to which it vested in the new banks taken over, the assets of them not relating to banking, it was within jurisdiction of State legislatures.

Held : That the word 'property' included not only assets but also the organisation, liabilities and obligation of a going concern as a unit. It is within competence of Parliament. It was not shown that banks held any assets for non-banking business.

4. That the right to business and property guaranteed by Art. 19 were infringed—

Held : That Articles 19(5) and 31 of the Constitution operated to delimit the exercise of the right to hold property on reasonable grounds. That a law relating to acquisition could not be challenged on the ground that it imposed unreasonable restrictions on the right to hold property. Articles 19 (1) (f) and 31(2) are not mutually exclusive. Gopalan's case (a) not correctly decided and over-ruled. A law affecting property must therefore, be tested by reference to both the Articles 19 and 31 of the Constitution.

5. By Section 15(2) E of the Act, the banks were entitled to engage in business other than Banking, but as their assets were taken over, this became practically impossible, because no asset was left. This is an unreasonable restriction :

Held : The restrictions imposed by the Act upon the right to the banks taken over to carry on non-banking business were, plainly unreasonable and hence void.

6. That selection of 14 banks only out of so many banks for nationalization amounted to an act of discrimination :—

Held: That no reliable data were placed before the Court to support the petitioner's above contention. So there was no discrimination.

7. That the further prohibition that these companies could not in future engage in banking business whereas other banking companies could do so, was clearly discriminatory.

Held: This was clearly discriminatory and liable to be struck down.

8. That the Act violated Art. 31(2) of the Constitution in as much as it did not grant compensation as guaranteed by the Constitution. The Act instead of providing for valuing the entire undertaking as a unit, provides for determining its value by taking into account only some of its components.

Held: (i) A law providing for acquisition of property could either fix the amount of compensation or specify the principles on which and the manner in which the compensation was to be determined. A law which did not meet these requirements would be declared void. The principle specified must be appropriate to the determination of compensation for the particular class of property sought to be acquired.

(ii) A principle specified by the law for the determination of compensation would be beyond the pale of challenge if it was relevant to determination of compensation and was a recognised principle and was appropriate in determining the value of the class of property sought to be acquired.

(iii) the broad object of principles of valuation is to award to the owner the equivalent to his property with its existing advantages and potentialities.

(iv) The method here adopted to determine its value was by taking into account only some of its components and not by valuing the entire undertaking, is not relevant and so bad.

(v) The aggregate of the value of components is not necessarily the value of the entirety of a unit of property acquired. So the law is bad.

(vi) The law is bad also because it omitted certain important classes of assets from its computation such as goodwill, unexpired portion of leases etc.

(vii) That compensation awarded in certain cases is illusory.

(viii) Provision for valuing land or buildings does not lay down a relevant principle of valuation of buildings.

(ix) That by giving to expropriated owner compensation in bonds of the face value of the amount determined and maturing after many years and carrying a certain rate of interest, the constitutional guarantee was not complied with. Because the market value of the bonds was not approximately equal to the face value with the effect the value of the compensation itself is much lower. Art. 31 (2) is impaired and so the law is bad.

(x) The Constitution guarantees that the expropriated owner must be given the value of his property i.e., what may be regarded reasonably as compensation for loss of property and that such compensation should not be illusory and not reached by the application of irrelevant principles,

(xi) A principle specified by the Parliament for determining compensation of the property to be acquired is not conclusive. If that view be accepted, the Parliament will be invested with a charter of arbitrariness and by abuse of legislative process the constitutional guarantee of the right to compensation may be severely impaired.

(xii) Property of the company is not the property of the shareholders who has merely an interest in the company under its Articles of Association.

(xiii) The expression 'property' in entry 42 List III includes a going concern or an undertaking.

(xiv) If there is no public purpose to sustain compulsory acquisition, the law violates Art. 31 (2) of the Constitution.

PART VI

Model Petitions, forms of Agreements and Notifications Relating to Acquisition of Land under L. A. Act, I of 1894

CHAPTER I

FORM 1

Petition of objection to Acquisition under Sec. 4A of the L. A. Act, I. of 1895

To

The Collector,

District.....

Re : Acquisition of.....

The humble petition of of Respectfully Sheweth :—

1. That the aforesaid land, has been notified under section 4, sub-section (1) of Act I of 1894 as being needed or likely to be needed for the Public purpose, viz.....

2. That your petitioner, being a person interested in the said land and premises as a proprietor (co-proprietor, sub-proprietor, mortgagee or tenant, as the case may be) begs to prefer objections to the acquisition of the same on the following amongst other grounds :—

- (a) for that regard being had to the condition of the locality, it is unnecessary and useless to acquire any land for the purpose for which it is proposed to be acquired ;
- (b) for that the purpose, for which the land is said to be needed or is likely to be needed is not a public purpose ;
- (c) for that the purpose, for which the land is said to be needed, would not be in the interest of public health and sanitation ;
- (d) for that, on the contrary, the lands, if acquired for the purpose aforesaid, would greatly affect the health and sanitation of the locality ;
- (e) for that the purpose may be equally served with comparatively less costs and much less hardship and inconvenience to the people of this locality if it is carried out in the following manner, that is to say, (here state the alternative proposal) ;
- (f) for that the benefit that would arise from the execution of the project would be more than counterbalanced by the hardship and inconvenience that would be caused to the people of the locality ;
- (g) for that the project, if carried out, will materially affect the petitioner's other land or building which is necessary to be retained by him for the beneficial enjoyment thereof ;

- (h) for that the (appropriate) Government has not applied its mind to the existence of public purpose and that its opinion is *mala fide*.
- (i) for that the notification does not disclose the public purpose specifically.

In the aforesaid circumstances, it is respectfully prayed, that the project may be abandoned and that no acquisition be made for the purpose for which it is proposed to acquire the land herein or in the alternative the scheme may be carried out in the manner suggested above, involving less costs and hardship.

N. B.—No court-fee stamp is necessary for a petition under section 5A. All the objections enumerated above will not be applicable in each case. Each case must be governed by facts and circumstances peculiar to itself. A person interested may very well object to the acquisition of land for the project of a "leper asylum" or a Municipal "pale depot" in residential quarters but he cannot reasonably object to the acquisition of land for a School, College or a public square or playground unless he can suggest a better alternative proposal. The Acquiring Body is bound to provide proper house accommodation for a large number of people who may find themselves homeless by reason of the execution of large schemes such as those of Improvement Trusts before acquisition.

FORM II

Statement of claim under Sec. 9 of the L. A. Act, I of 1894.

To

The Collector under the L. A. Act I of 1894.

Dt.....

L. A. Case No.....of.....

Re : Project.....

Statement of Claim by.....of.....

The above named claimant begs respectfully to state as follows :—

1. That he is proprietor, (co-proprietor, sub-proprietor, mortgagee or tenant, as the case may be) of the land proposed to be acquired in the above case.
2. That the names and addresses of other co-sharers are as follows :—
(Here give such names and addresses).
3. That the said land has been inherited/purchased from.....
(give the abstract of titles and details of mortgage deed or charge, if any).
4. That the rents or profits derived from the land (part or whole) Rs.p m., for last 3 years.
5. That the land proposed to be acquired in the above case within the boundaries mentioned in the notice is by measurement..... and not,.....as stated in the notice.

6. That this claimant would claim the market value of the land at Rs.....per.....(and Rs.....for the building standing thereon, if any, a detailed valuation of which by Mr.....Civil Engineer and Valuer is appended herewith).

7. That he would claim Rs.....as damage for the standing crops or trees a list of which is hereunto annexed.

8. That he would claim Rs.....for damage for severance of the land acquired in the above case from his other land.

9. That he would claim Rs.....for damage sustained by him by reason of the acquisition injuriously affecting his other property, viz.,.... and Rs.....for injuriously affecting his earnings.

10. That he would claim Rs.....as reasonable expenses incidental to the change of residence or place of business.

11. That he would claim Rs.....per annum or month that would result from the diminution of the profits of the land between the date of the publication of the declaration under s. 6 and the time of the Collector's taking possession of the land.

12. That he would also claim usual 15% statutory allowance on the above amounts.

13. That the applicant is competent to alienate the property by sale or otherwise.

N. B.—No court-fee is needed on a statement of claim under sec. 9. It is necessary that the statement of claims should be most carefully prepared. Claims are so perfunctorily made, owing to the want of proper appreciation of section 23 of the Act that most of the damages, mentioned in sec. 2 are not claimed at all and consequently no damages are awarded. The distinction between damages for severance and damage for injurious affection should be carefully noted, and claim should be filed in each case with such modification as in each case may seem fit and proper, regard being had to the damages, which are frequently overlooked. All attention seems to be bestowed on the market value of the land to the exclusion of the damages and in the case of market-value exaggeration should always be avoided.

FORM III

Statement of Claims under Sec. 10 of the L. A. Act, I of 1894.

To

The Collector under L. A. Act I of 1894.

District.....

Re :—L. A. Case No.....of.....

Re :—Project.....

Statement of Claims of.....of.....

In pursuance of a notice issued under section 10 of the L. A. Act-I of 1894, the claimant above named begs to state as follows :—

firstly, that he is the sole proprietor of the premises to be acquired in the above case, and there is no co-proprietor, sub-proprietor, mortgagee, tenant or otherwise of the property.

(or in case of joint property)

firstly, that he is a co-proprietor of the premises to be acquired in the above case with.....of.....as joint proprietors ; (here give names and addresses of other persons having any interest and the nature of their interests).

secondly, that the property is free from all encumbrances and has not been mortgaged and has not been made a charge in any way ;

(or, when there is a mortgage or charge)

secondly, that the property is under the mortgage of Rs.....in favour of.....of.....by a deed of mortgage.....and the amount due to the mortgagee with interest would amount to Rs.....more or less.

or

that by a deed of Trust (or Endowment or Wakf.....or by an agreement or by decree) the property is subject to a charge for the payment of the sum of Rs.....per mensem (or annum as the case may be) for the due performance of the worship of.....at.....or for the maintenance of.....during her natural term of life ;

thirdly, there is no tenant on the premises, who has got any heritable and transferrable interest in the same. The tenants are (1).....(s).....who are all tenants-at-will ;

or

(when there is lease for a term of years or for an indefinite term).

thirdly, the property has been leased out to.....of.....for a term of.....(and if there is a clause in the lease for forfeiture in case of notice of acquisition given) that the tenant has no right to share any portion of the compensation money under the agreement between the parties ;

fourthly, the rents and profits received on account thereof for three years next preceding are set forth in the table annexed thereto.

Table showing gross income for three years.

Year...	Rupees	Paise
19.....
19.....
19.....

N. B. A statement under section 10 does not require any court-fee stamp. It is not obligatory on the Collector to issue any notice under

section 10. Notice under section 10 is issued only when there are conflicting claims and discrepant accounts of rents and profits. No statement under section 10 should be made haphazardly but should be made after very careful consideration of the deeds and books of account because in case any statement is made which cannot be supported by trustworthy evidence in court on reference, the party is likely to be saddled with heavy costs and interests.

FORM IV

Petition of Reference under Sec. 18 of the L. A. Act, I of 1894.

To

The Collector under Act I of 1894.

Dt.....

L. A. Case No.....of.....

Re :—Project.....

The humble petition of.....
of.....

Respectfully Sheweth :—

1. That an award dated the.....day of.....19....has been made by your Honour for the adquisition of the land in the above case.

2. That your petitioner is a person interested in the land and being aggrieved by the award

Your petitioner prays that your Honour may be pleased to refer the case to the Civil Court under section 18 of the L. A. Act I of 1894 for the determination of the question of valuation and (or apportionment on the following amongst other grounds :—

GROUND S

(a) For that the measurement of the land acquired in the above case should have been held to be.....and not.....

(b) For that the land has been greatly undervalued and that the market-value should have been held to be not less than Rs.....per.....

(c) For that the building on the land acquired should have been valued at Rs.....

(d) For that the learned Collector's award of damages for standing crops and trees is quite inadequate. He should have allowed Rs.....for the same.

(e) For that the learned Collector should have held that the claimant has sustained considerable damage by reason of the acquired land being severed from his other lands and should have awarded Rs.....for damage for severance.

- (f) For that the Collector should have held that the acquisition of the land acquired has injuriously affected his property *viz.*..... and has affected his earning and should have allowed Rs..... and Rs..... respectively as damage.
- (g) For that the Collector should have awarded Rs..... as damage for diminution of the profits of the land acquired between the time of the publication of notification under section 4 (1) and the taking possession of the same.
- (h) For that the apportionment made by the Collector is entirely wrong.
- (i) For that the Collector should have held that.....claimant No.....has no right, title and intrest in the land acquired and is not entitled to any portion of the compensation awarded for acquisition of the same.
- (j) For that the claimant No.....should have been held to be solely entitled to the land acquired, and whole of the compensation money awarded for acquisition for the same should have been awarded to him.
- (k) For that the principles adopted for ascertaining compensation has no relevancy and is mala-fide.

Notes :—The petition must bear a court-fee stamp of .75 paise in Bengal under Sch. II, Art I (b) of C.-F. Act, and such court fees in other provinces as is prescribed for petitions by the Local Court Fees (Amendment) Acts. It need not be verified and it must be filed within six weeks from the date of the award, if the claimant was present when the award was made or was represented before the Collector ; in any other case within six weeks of the receipt of the notice of the award from the Collector or within six months, from the date of the Collector's award, whichever period shall first expire. It should specially be borne in mind that a person who has received the amount of compensation otherwise than under protest shall not be entitled to make an application under section 18. See proviso (ii), sub-sec. (2) of sec. 31.;

FORM V

Petition for stopping payment of compensation to a claimant under Sec. 31 (2) of the L. A. Act, 1 of 1894:

To

The Collector under Act 1 of 1894.
of.....

L. A. Case No.....of.....
Re :—Project.....

The humble petition of A. B.....of.....

Respectfully Sheweth :—

1. That an award has been made by your Honour in the above case awarding Rs.....to C. D.....claimant No.....

2. That the said C. D. has no right, title and interest in the property acquired in the above case, and that he is not entitled to receive the compensation money awarded for the same or any portion thereof.

3. In the aforesaid circumstances, your petitioner humbly prays that your honour will be pleased not to make payment of the compensation awarded in the above case to C. D. or any portion thereof to him, but to send the amount for deposit in the Court under section 31 (2) of the L. A. Act.

And for which your petitioner as in duty bound shall ever pray.

N. B.—It should be noted that the Collector has to make a reference to the Civil Court of his own motion if there be any dispute as to the title to receive the compensation or as to the apportionment of it, and he shall deposit, the amount of compensation in Court, under section 31 (2). It is therefore, necessary that there must appear in the record dispute as to the title to receive the compensation or as to the apportionment of it before he can take action under section 31 (2). As the Collector is bound to tender payment and to pay the compensation according to the award, no time should be lost to file the application before the payment is made, though a petition for reference would lie after payment.

FORM VI

Petition for Investment under Sec. 33 of the L. A. Act, 1 of 1894.

In the Court of the Special L. A. Judge of.....
Dist.....

L. A. Case No.....of.....

(valuation or apportionment).

The humble petition of A. B. of.....claimant No.....
in the above case.

Respectfully Sheweth :—

1. That on account of the dispute as to the title to receive the compensation awarded in the above case or as to the apportionment of it, the collector has deposited in this Court Rs. the amount of compensation awarded in the above case to the credit of this Court in the Civil Deposit.

2. That your petitioner is solely entitled to the aforesaid compensation money and the claimant No.....has no title to receive any part of the compensation money.

3. That considerable time will elapse before the dispute can be decided by this Court and your petitioner will be a great loser in case the money is left in deposit without any profit.

4. That the sum in deposit would yield a large amount by way of interest if invested in government or other approved securities.

Your petitioner therefore humbly prays that the Court may be pleased to invest the amount in deposit in Court in the above case in Government or other approved securities as it may think proper.

And for which your petitioner as in duty bound shall ever pray.

FORM VII

Petition for Acquisition of the whole of the house, manufactory or building under Sec. 49 of the L. A. Act, I of 1894, when only a part of a house, manufactory or building is notified to be acquired.

To

The Collector under Act I of 1894.

at.....

L. A. Case No.....

Project.....

The humble petition of.....of.....

Respectfully Sheweth :—

1. That the property proposed to be acquired in the above case is a part of a house, manufactory or building (as the case may be) and, reasonably required for the full and unimpaired use of the said house, manufactory or building.

2. That in case of such partial acquisition, the remainder of the house, manufactory or building will be so injuriously affected as to render it useless for the purpose for which the said house, manufactory or building is being used,

Your petitioner therefore prays that provisions of Act I of 1894 may not be put in force for the purpose of acquiring a part of the house, manufactory or building in the above case and that the whole of such house, manufactory or building be acquired.

And for which your petitioner, as in duty bound, shall ever pray.

N. B.—An owner should exercise great caution before he puts in a petition under section 49. The Collector can acquire a part of any house, manufactory or building under the L. A. Act, if the owner does not object. He must acquire the whole of the house, manufactory or building if the owner desire it. An owner must object if the proposed acquisition of a part has such an injurious effect on the rest of the house, manufactory or building as to render it

useless to him for the purpose for which the same was used. An owner should not object, if it would inconvenience him a little but the loss can be compensated by money value. The section gives an owner, however, power to withdraw or modify his objection, before the Collector has made his award but not after, so as to give him sufficient time and opportunity to think it out for himself, which is the lesser evil of the two, whether the acquisition of a part of his house, manufactory or building would or would not be preferable to the acquisition of the whole.

FORM VIII

Notice of withdrawal and modification of objection under the Proviso to Section 49 of the L. A. Act, I of 1894.

To

The Collector under Act I of 1894.

at.....

L. A. Case No.....

Project.....

The humble petition of.....of.....

Respectfully Sheweth :—

1. That your petitioner is the owner of the house, manufactory or building, a part of which is proposed to be acquired in the above case.

2. That your petitioner has filed objection to the acquisition only of a part of the same house, manufactory or building and has prayed for the acquisition of the whole of the same by his petition dated the day of..... 19.....

3. That in view of the loss and inconvenience to be caused to your petitioner by change of residence or place of business, your petitioner is advised that it would be to his advantage to stay in the house or carry on the business in the manufactory a part of which is proposed to be acquired in the above case. Your petitioner hereby withdraws (or modifies) his desire and prayer contained in his petition aforesaid dated.....

Your petitioner, therefore, humbly wants to bring to your notice that he has no objection to the part of the same being acquired as proposed ;

or

that he has no objection to the same being acquired as proposed, subject to the modification as hereinafter mentioned viz.—(state the modification proposed).

N. B.—It is merely a notice. It does not require any court-fee stamp. It may be in any form.

PART VI

CHAPTER II

MODEL FORMS OF AGREEMENTS AND NOTIFICATIONS UNDER W. B. LAND ACQUISITION MANUAL

FORM I

[See paragraph 10 of W. B. L. A. Manual.]

Standard Form of Agreement to be executed by a Company desiring to acquire land under Section 41 of the Land Acquisition Act.

Memorandum of Agreement made this.....day of.....19.....
between the.....Company, a Company (registered under the
Indian Companies Act, 1882) and having its resistered office at....in....
(hereinafter called "the Company") of the one part and "the Governor" of
the State of West Bengal (hereinafter called the Governor) of the other part.

Whereas for the purpose of the construction of.....the Company
has applied to the Government of West Bengal for the acquisition under
the provisions of the Land Acquisition Act, 1894, of the piece or parcel of
land containing.....acres or thereabout situate in the village of.....
in the district of.....and more particularly described in the schedule
hereto and delineated in the plan hereunto annexed.

And whereas the said Government of West Bengal, being satisfied by
an enquiry held under Sec. 40 of the said Act that the proposed acquisition
is needed for the aforesaid purpose and that the said work is likely to prove
useful to the public, has consented to acquire on behalf of the Company the
piece or parcel of land hereinbefore described.

And whereas the said Government of West Bengal has required the
Company under the provision of Sec. 41 of the above-mentioned Act to
enter into the agreement with the Governor hereinafter contained. Now
this indenture witnesseth that it is hereby agreed and declared as follows :—

1. On demand the Company shall and will pay to the said Government
of West Bengal all and every compensation in respect of the said land
tendered, paid or awarded ro to be tendered, paid or awarded by the
Collector under the Land Acquisition Act, 1894, or by Court or Courts to
which an appeal from the award of the said court may be preferred and
all costs, charges and expenses of the proceeding in the aforesaid Courts,
or otherwise incidental to the proposed acquisition or payable in respect
thereof under the provisions of the said Act.

2. On demand made by the said Collector the obligations of the
Company under the last preceding clause not being thereby limited, the
Company shall and will deposit with the said Collector such sum or sums
of money as in his discretion the said Collector may in anticipation estimate
to be necessary for the purposes mentioned in the last preceding clause.

3. On payment by the Company of all demands under the foregoing first clause, or, in the discretion of the said Government of West Bengal (on deposit by the Company of all estimated amounts as provided in the second clause), but not before possession shall have been taken under the provisions of the above-mentioned Act, the Governor shall make over possession of the said land to the Company and shall execute and do all such acts and deeds as may be necessary and proper for effectually vesting the same in the Company.

4. The said land shall be held by the Company for the purposes of such a.....as is hereinbefore mentioned and without the sanction in writing of the said Government of West Bengal first had and obtained for no other purpose whatsoever.

5. The said.....shall be completed (and fully equipped in all respects ready for use) within.....year (s) from the date on which possession of the said land shall have been given to the Company.

6. Should the said.....not be completed (and fully equipped in all respects ready for use) within the period stated in the last preceding clause or within such further period as in its discretion may be prescribed or allowed by the said Government of West Bengal or should the said land at any time thereafter cease for a period of.....consecutive months to be held and used or cease to be required for the purpose or purposes provided for in the foregoing fourth clause then and in any such case, the said Government may summarily re-enter upon and take possession of the said land together with all buildings thereon, whether such buildings were erected before or after transfer of the land to the Company, and thereupon the interest of the Company in the said land and buildings shall absolutely cease and determine.

7. On taking such possession the said Government may sell or otherwise deal with the said land and building as it may think proper.

- (i) Should the said Government sell the land with the buildings the said Government after deducting the expenses incurred in connection with the said taking of possession and with such sale shall pay the proceeds to the Company.
- (ii) Should the said Government decide not to sell the land and buildings, the said Government shall retain the said land and buildings thereon in which case the Governor shall repay to the Company the market value as on the day of re-entry of all the buildings erected by the Company and all sums received from the Company in respect of all and every compensation as provided in the foregoing first clause (less the statutory allowance of 15 per cent., and less any amount received on account of trees and buildings which are not in existence at the time of resumption), but will not repay any sums paid and received on account of costs, charges and expenses,
- (iii) Should the said Government decide to sell the buildings only upon such sale, the Governor shall, after deducting the expenses of taking possession and selling, pay the balance of the proceeds of sale to the Company, together with the sum received from the

Company in respect of the compensation for the land (less the statutory allowance of 15 per cent. and less any amount received from the Company on account of trees and buildings which are not in existence at the time of resumption), but will not repay any sum paid and received on account of costs, charges and expenses.

8. The public shall be entitled to use the.....on the following terms.....

9. Should any dispute or difference arise touching or concerning the subject-matter of this agreement or any covenant clause or thing herein contained, the same shall be referred to the said Government of West Bengal and opinion, and the decision of the said Government upon such dispute or difference shall be final and conclusive and binding on the parties hereto.

The Schedule above referred to

All that piece or parcel of land situated in the village of.....
J. L. No....., P. S....., district.....
containing an area of B....., C....., Ch.....Sq. fit.
.....equivalent to.....acres comprising C. S./R. S. plots
Nos.....bounded on the—

North—

East—

South—

West—

and called or known as premises No.....

In witness whereof (the.....¹ Company has caused its common seal to be affixed and the Governor of the State of West Bengal hath hereunto set his hand and seal) the day and year first above written.

² The common seal of the abovenamed.....Company was hereto affixed in the presence of.....

SEAL

Witness

Managing Agents.

Signed, sealed and delivered by.....
.....Member, Board
of Revenue and Secretary to the
Government of West Bengal in the
Department of Land and Land
Revenue (*ex-officio*), on behalf of the
Governor of the State of West Bengal.
(Signature)

(Witness).

¹ (Or, as the case may be) so and so the duly constituted attorney of the Company and the Governor of the State of West Bengal have hereunto set their respective hands and seals.

² (Or, as the case may be) signed, sealed and delivered by (sign).

Attorney for the Company in the presence of (witness).

Note.—This agreement being an agreement under Sn. 41 of the L. A. Act is not chargeable with any stamp duty.. *Vide* Section 51,

FORM 1A

[See sub-paragraph (2) to paragraph 10]

**Standard Form of Deed of Transfer to be executed in cases of
acquisition of land for Companies under Section 41 of
the Land Acquisition Act**

This Indenture is made this day of one thousand nine hundred and between the Governor of the State of West Bengal (hereinafter called "The Governor" which expression where not repugnant to the context shall include his successors in office) and assigns) of the one part and the a Company registered under the Act and having its registered office at and having a branch office at (hereinafter called "The Company" which expression where not repugnant to the context shall include its successors and assigns) of the other part.

Whereas in the month of the Company applied to the Governor to acquire the premises hereinafter described under the provisions of the Land Acquisition Act, I of 1894, on behalf of the Company to enable the Company to construct thereon a , and the Governor after enquiry held under the provisions of the said Act being satisfied that the proposed acquisition was needed for the aforesaid purpose and that the said work was likely to prove useful to the public, consented to acquire the said premises on behalf of the Company.

And whereas pursuant to the provisions of Sec. 41 of the said Act the Company entered into an Agreement with the Governor bearing date the whereby it was agreed *inter alia* that the Company should pay to the Governor all compensation to be awarded and all costs, charges and expenses payable in respect of the said acquisition and that the Company should construct and complete on the said premises the necessary buildings and plant for the said within years from the date on which possession of the said premises should be given to the Company and further that the public in the vicinity of the said when completed should be entitled to and it was also agreed that the Governor should execute and do all acts and deeds necessary and proper for vesting the said premises in the Company.

And whereas the Governor proceeded to acquire the said premises and a declaration No., dated the under Sec. 6 of the said Act that the land was needed for the said purpose was duly published in the "Calcutta Gazette" of the

And whereas the having duly held an enquiry made an award of compensation under Sec. 11 of the said Act and duly took possession under Sec. 16 or 17 (1) of the said Act of the premises which thereupon vested absolutely in the Government of

West Bengal (hereinafter referred to as "the Government") free from all encumbrances.

And whereas on the..... day of..... one thousand nine hundred and..... possession of the said premises was made over by the Governor to the Company.

And whereas the Company has paid to Government/deposited with the Collector on..... the sum of Rupees..... being the amount so far demanded under clause (1)/clause (2) of the aforesaid Agreement under Sec. 41 of the Land Acquisition Act, I of 1894 and whereas the Company admits its liability to pay any further sum or sums demanded under clause (1) or (2) of the aforesaid Agreement.

And whereas the said premises are by virtue of the Adaptation of Laws Order, 1950, made under Article 372 (2) of the Constitution of India, vested in the Government in trust for the Company and the Company has requested the Governor on behalf of the Government to execute these presents for the purpose of vesting the said premises in the Company in accordance with the said Agreement.

Now this Indenture witnesseth that in pursuance of the said Agreement the Governor on behalf of the Government and acting under the provisions of Article 299 of the Constitution of India, both hereby grant, transfer, convey and assign unto the company all that piece or parcel of land more particularly delineated in the plan hereunto annexed and described in the schedule hereunder written with its appurtenances hereinbefore and hereinafter referred as the said premises to hold unto the Company absolutely free of revenue and free from encumbrances but subject to the provisos following that is to say provided always and it is hereby agreed and declared that if at any time hereafter the said premises shall (except with the sanction in writing of the Governor first had and obtained) be used by the company for any purposes other than the..... or purposes incidental thereto or if the said premises for a period of..... consecutive months cease to be held and used or cease to be required for such purpose or purposes the Governor may re-enter upon and take possession of the said premises together with all buildings thereon (whether such buildings were erected before or after transfer of the land to the Company) which shall thereupon vest in the Government, absolutely and the Government may either sell the said premises and buildings thereon and upon such sale the Governor shall after deducting the expenses of taking possession and selling pay the balance of the proceeds of sale to the Company or the Governor may retain the said premises together with all buildings thereon in which case the Governor shall repay to the Company the market value as on the day of re-entry of all the buildings erected by the Company and all sums received from the Company in respect of the aforesaid compensation (less the statutory allowance of 15 per cent. and less any amount received from the Company on account of trees and buildings which are not in existence at the time of resumption) but not sums received on account of costs, charges and expenses provided also that should any dispute arise as regards the market value of the above buildings erected by the Company the same shall be referred to the Government and

the opinion and decision of the Government upon such dispute shall be final and conclusive and binding upon the parties hereto.

Provided also that if at any time hereafter the Governor on behalf of the Government shall become entitled to exercise the power of resumption of the said premises and shall fail to exercise such power the Company may at any time give to the Governor notice in writing calling upon him to exercise such power and if the said power shall not be exercised within one year after receipt of such notice by him the same shall be deemed to be waived and thereafter shall cease to be exercisable and the said premises shall thenceforth be and remain vested in the Company absolutely and for ever and the Governor hereby covenants with the Company that he has not at any time done or knowingly omitted or suffered any act, deed or thing whereby he is in any way prevented or retained from transferring the said premises unto the Company in manner aforesaid and the Company hereby covenants with the Governor that subject to the provisos hereinbefore contained the public in the vicinity of the said constructed upon the said premises shall be entitled to.....

The Schedule above referred to

All that piece or parcel of land situated in the village of
J. L. No....., P. L....., district.....containing an area
of B.....C.....Ch.....Sq. ft.....equivalent to
.....area comprising C. S./R. S. plots Nos.....
.....bounded on the—

North—

East—

South—

West—

and called or known as premises No.....

It witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered by
the.....Member Board
of Revenue and Secretary to the
Government of West Bengal, Depart-
ment of Land and Land Revenue (*ex-
officio*), for and on behalf of the
Governor of the State of West Bengal
in the presence of.....

Signed, sealed and delivered by
.....
the duly constituted attorneys for and
on behalf of.....in the
presence of.....
.....

FORM 1B

[See sub-paragraph (3) of paragraph 10]

Standard Form of Agreement to be executed by an industrial concern desiring to acquire land under Sec. 41 read with Sec. 38-A1 of the Land Acquisition Act.

[A] Memorandum of Agreement made this.....day of.....19....
Between.....son of
residing at.....and carrying on business
under the name and style of.....and having his principal place
of business at.....hereinafter referred
to as "the Applicants";

[B] Between (1).....son of.....
residing at....., (2).....
son of.....residing at.....
and (3).....son of.....
residing at.....carrying on business under
the name and style of.....and having their
principal place of business at.....hereinafter referred to as
"the Applicants",

[C] Between (1).....son of.....
residing at.....(2).....son
of.....residing at.....
and (3).....son of.....
residing at.....carrying on business in co-
partnership under the name and style of—
and having their principal place of business at.....
hereinafter referred to as "the Applicants",
(which expression shall, where the context so admits, be deemed to
include his/their heirs executors administrators, representatives and
assigns) of the one part and the Governor of the State of West Bengal
hereinafter called "The Governor " (which expression shall, unless excluded
by or repugnant to the context, be deemed to include his successors in office
and assigns) of the other part.

Whereas the applicant is/applicants are the owner(s) and proprietor(s)
of the industrial concern known as.....and
located at.....(hereinafter referred to
as "the said concern") and whereas for the construction and maintenance
of.....

.....for the
use of the workmen employed at the said concern, the applicant (s) has/have
applied to the Government of West Bengal for acquisition under the pro-
visions of the Land Acquisition Act, 1894, of the piece or parcel of land
together with buildings, structures, etc., standing thereon, containing....
.....acres or thereabout, situate in village.....
thana.....district.....and more

particularly described in the Schedule hereto and delineated in the plan hereunto annexed.

And whereas the said Government of West Bengal being satisfied by an enquiry held under Sec. 40 of the said Act that the proposed acquisition is needed for the aforesaid purposes and that the said work is likely to prove useful to the public has consented to acquire on behalf of the applicant (s), the piece or parcel of land hereinbefore described.

And whereas the said Government of West Bengal has required the applicant under the provisions of Sec. 41 of the abovementioned Act to enter into the agreement with the Governor hereinafter contained.

Now this Indenture witnesseth that it is hereby agreed and declared as follows :—

1. On demand the applicant (s) shall and will pay the said Government of West Bengal all and every compensation in respect of the said land, tendered, paid or awarded or to be tendered, paid or awarded by the Collector, under the Land Acquisition Act, 1894, or by the Court to which a reference under Part II of the said Act may be made, or by the Court or Courts, to which an appeal from the award of the said Court or Courts may be preferred and all costs, charges and expenses of the proceedings in the aforesaid courts or otherwise incidental to the proposed acquisition or payable in respect thereof under the provisions of the said Act.

2. On demand made by the said Collector the obligations of the applicant (s) under the last preceding clause not being thereby limited, the applicant (s) shall and will deposit with the said Collector such sum or sums of money as in his discretion the said Collector may in anticipation estimate to be necessary for the purposes mentioned in the last preceding clause.

3. On payment by the applicant (s) of all demands under the foregoing first clause or in the discretion of the said Government of West Bengal [on deposit by the applicant (s) of all estimated amounts as provided in the second clause] but not before possession shall have been taken under the provisions of the above-mentioned Act, the Governor shall make over possession of the said land, buildings etc., to the applicant (s) and shall execute and do all such acts, and deeds as may be necessary and proper for effectually vesting same in the applicant (s).

4. The said land shall be held by the applicant (s) for the purposes of construction and maintenance of
for the use of the workmen employed at the said concern (hereinafter referred to as "the said works") and without the sanction in writing of the said Government of West Bengal first had and obtained for no other purpose whatsoever and the same shall not at any time be dealt with, transferred or otherwise disposed of by the applicant (s) separately from the said concern and shall not be subjected or be liable to be partitioned or sub-divided for separate occupation or enjoyment of parts thereof without such sanction as aforesaid.

5. The said works shall be completed (and fully equipped in all respects ready for use) within.....years from the date on which possession of the said land shall have been given to the applicant (s).

6. Should the said work not be completed (and fully equipped in all respects ready for use) within the period stated in the last preceding clause or within such further period as in its discretion may be prescribed or allowed by said Government of West Bengal or should the said land at any time thereafter cease for the period of.....consecutive months to be held and used or ceased to be required for the purpose or purposes provided for in the foregoing fourth clause then and in any such case the said Government may summarily re-enter upon and take possession of the said land, together with buildings thereon, whether such buildings were erected before or after transfer of the land, to the applicant (s) and thereupon the interest of the applicant (s) in the said land and buildings shall absolutely cease and determine.

7. On taking such possession the said Government may sell or otherwise deal with the said land and buildings as it may think proper—

(i) Should the said Government sell the land with the buildings, the said Government after deducting the expenses incurred in connection with the said taking of possession and with such sale shall pay the proceeds to the applicant (s).

(ii) Should the said Government decide not to sell the land and buildings, the said Government shall retain the said land and buildings thereon in which case the Governor shall repay to the applicant (s) the market value as on the day of re-entry of all the buildings erected by the applicant (s) and all sums received from the applicant (s) in respect of all and every compensation as provided in the foregoing first clause (less the statutory allowance of fifteen per cent. and less any amount received on account of trees and buildings which are not in existence at the time of resumption) but will not repay any sums paid and received on account of costs, charges and expenses.

(iii) Should the said Government decide to sell the buildings only, upon such sale, the Governor after deducting the expenses of taking possession and selling, pay the balance of the proceeds of sale to the applicant (s) together with the sum received from the applicant (s) in respect of the compensation for the land [less the statutory allowance of fifteen per cent. and less amount received from the applicant (s) on account of trees and buildings which are not in existence at the time of resumption] but will not repay any sum paid and received on account of costs, charges and expenses.

8. The public in the vicinity of the said concern shall, like the workmen employed therein, be entitled to.....at the.....to be constructed by the applicant (s) as a part and parcel of the said works.

9. Should any dispute or difference arise touching or concerning the subject-matter of this agreement or any covenant, clause or thing herein

* Insert these words if appropriate to the particular work.

contained the same shall be referred to the said Government of West Bengal and the opinion and decision of the said Government upon such dispute or difference shall be final and conclusive and binding on the parties hereto.

The Schedule above referred to

All that piece or parcel of land measuring, more or less, acres, and comprising cadastral plots Nos. in mouza jurisdiction list No., thana., district

In witness whereof the parties hereto have executed these presents the day and year first above written.

Signed by the said applicant (s).

.....(name)

.....(Signature)

.....(name)

.....(Signature)

.....(name)

.....(Signature)

In the presence of :—

.....
(Signature of witness)

Signed by the Member, Board of Revenue and Secretary to the Government of West Bengal in the Land and Land Revenue Department (*ex-officio*), on behalf of the Governor of the State of West Bengal in the presence of :—

N.B.—Any of the alternative descriptions [A], [B] and [C] should be retained according to the requirement of the individual case.

[A] should be used when a single individual is the owner of the concern,

[B] when several individuals are joint owners, *i. e.*, brothers inheriting the property from common ancestor, and

[C] when several individuals have contracted to carry on business in partnership, *i. e.*, a firm.

FORM 1C

[See sub-paragraph (3) of paragraph 10.]

Standard Form of Transfer to be executed in case of acquisition of land for industrial concerns under Sec. 41, read with Sec. 38A, of the Land Acquisition Act.

This Indenture made this day of 19.... between the Governor of the State of West Bengal hereinafter called "the

Governor" (which expression shall unless excluded by or repugnant to the context be deemed to include his successors in office and assigns of the one part and

[A] son of
residing at and carrying on business
under the name and style of
..... and having his principal place of business at
....., hereinafter referred to as "the transferee",

[B] (1) son of
residing at (2)
..... son of residing at
..... and (3)
son of residing at
..... carrying on business under the name and style of
..... and having their
principal place of business at
hereinafter referred to as "the transferees",

[C] (1) son of
residing at (2)
..... son of residing at
..... and (3)
son of residing at
..... carrying on business in co-partnership under the name and
style of and having their principal
as "the transferees",

(which expression shall unless excluded by or repugnant to the context be deemed to include their respective heirs, executors, administrators, representatives and assigns) of the other part:

Whereas transferee(s) is/are the owner(s) and proprietor(s) of the Industrial concern known as

..... located at
(hereinafter referred to as "the said concern") and whereas in the month
of 19... the transferee(s) applied to the
Governor to acquire the premises hereinafter described under the provisions
of the Land Acquisition Act, I of 1894, on behalf of the transferee(s) for the
construction and maintenance of

.....
for the use of the workman employed at the said concern (thereinafter called
"the said works") and the Governor after enquiry held under the provisions
of the said Act being satisfied that the proposed acquisition was needed
for the aforesaid purpose and that the said works were likely to prove useful
to the public, agreed to acquire the same premises on behalf of the
transferee(s).

And whereas pursuant to the provisions of Sec. 41 of the said Act the
said transferee(s) entered into an agreement with the Governor bearing
date the whereby it was agreed *inter alia*

that the transferee(s) should pay to the Governor all compensation to be awarded and all costs; charges and expenses payable in respect of the said acquisition and that the transferee(s) should construct and complete on the said premises the necessary buildings and works for the said purposes as hereinbefore mentioned within.....months/year from the date on which possession of the said premises would be given to the transferee(s) and further that the public in the vicinity of the said concern shall, like the workmen employed therein, be entitled to.....at the....., constructed by the transferee(s) as a part and parcel of the said works and it was also agreed that the Governor should execute and do all acts and deeds necessary and proper for vesting the same premises in the transferee(s).

And whereas the Governor proceeded to acquire the said premises and a declaration No.....dated the.....under Sec. 6 of the said Act the land was needed for the purpose was duly published at page....., Part I of the *Calcutta Gazette* of the.....19....

And whereas the.....having duly held on an enquiry made an Award of compensation under Sec. 11 of the said Act and duly took possession under Sec. 161, under Sec. 17 (1), ¹ partly under Sec. 16 and partly under Sec. 17 (1) of the said Act of the premises which thereupon vested absolutely in Government of West Bengal (herein after referred to as "the Government"), free from all encumbrances.

And whereas on the.....day of.....19....[and on the.....day of.....19....] possession of the said premises was made over by the Governor to the transferee(s).

And whereas the transferee(s) paid to the Government/deposited with the Collector of.....on.....the sum of Rs.being the amount so far demanded under clause (1)/clause (2) of the aforesaid Agreement under Sec. 41 of the Land Acquisition Act, 1 of 1894.

And whereas the transferee (s) admit (s) his/their liability to pay any further sum or sums demanded under clause (1) or clause (2) of the said Agreement.

And whereas the said premises are by virtue of the Adaptation of Laws Order, 1940, made under Article 372(2) of the Constitution of India, vested in the Governor in trust for the transferee(s) and the transferee(s) has/have requested the Governor on behalf of the Government to execute these presents for the purpose of vesting the said premises in the transferee(s) in accordance with the said agreement.

Now this indenture witnesseth that in pursuance of the said agreement the Governor on behalf of the Government and acting under the provisions of Article 299 of the Constitution of India, doth hereby grant transfer, convey an assign unto the transferee(s) all that piece or parcel of land more particularly delineated in the plan hereunto annexed and described in the

¹ To be struck out where necessary.

Schedule hereunder written with its appurtenances hereinbefore and hereinafter referred to as "the said premises" to hold unto the transferee(s) absolutely, free of revenue and free from encumbrances but subject to the provisions following that is to say provided always and it is hereby agreed and declared that if at any time hereafter the said premises shall (except with the sanction in writing of the Governor first had and obtained) be used by the transferee(s) for any purposes other than the aforementioned purpose or purposes incidental hereto or if the said premises for a period of consecutive months cease to be held and used or cease to be required for such purpose or purposes the Governor may re-enter upon and take possession of the said premises together with all buildings thereon [whether such buildings were created before or after transfer of the land to the transferee(s)] which shall thereupon vest in the Government absolutely, and the Governor may either sell the said premises and buildings thereon and upon such sale the Governor shall after deducting such expenses of taking possession and selling pay the balance of the proceeds of sale to the transferee(s) or the Governor may retain the said premises together with all buildings thereon in which case the Governor shall repay to the transferee (s) the market value as on the day of re-entry of all the buildings created by the transferee (s) and the sums received from the transferee (s) in respect of the aforesaid compensation [less the statutory allowance of 15 per cent. and less any amount received from the transferee (s) on account of trees and buildings which are not in existence at the time of resumption] but no sums received on account of costs, charges and expenses provided also that should any dispute arise as regards the market value of the above buildings erected by the transferee (s) the same shall be referred to the Government and the opinion and the decision of the Government upon such dispute shall be final and conclusive and binding upon the parties hereto, provided also that if at any time hereafter the Governor on behalf of the Government shall become entitled to exercise the power of resumption of the said premises and shall fail to exercise such power the transferee (s) may at any time give to the Governor notice in writing calling upon him to exercise such power and if the said power shall not be exercised within one year after receipt of such notice by him the same shall be deemed to be waived and thereafter shall cease to be exercisable and the said premises shall thenceforth be and remain vested in the transferee (s) absolutely and for ever and the Governor hereby covenants with the transferee (s) that he has not at any time done or knowingly omitted or suffered any act deed or thing whereby he is in any way prevented or restrained from transferring the said premises unto the transferee (s) in manner aforesaid and the transferee (s) hereby covenant (s) with the Governor that he/they shall not without the sanction, in writing, of the said Government first had and obtained use the said premises for no purpose whatsoever other than those hereinbefore mentioned and shall not at any time deal with transfer or otherwise dispose of the same separately from their said business and that the said premises shall not be subject to or be liable to partition or sub-division for separate occupation or enjoyment either in whole or in parts without such sanction as aforesaid and that the public in the vicinity of the said concern shall, like the workmen employed

at the said concern, be entitled to.....the.....constructed by the transferee (s) at the said premises.

The Schedule above referred to

All that piece or parcel of land situated in mouza..... jurisdiction list No....., P. S....., district..... containing an area of more or less.....acres comprising cadastral plots Nos.....

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered by
.....Member,
Board of Revenue and Secretary to the
Land and Land Revenue Department
(*ex-officio*) of the Government of West
Bengal on behalf of the Governor of
the State of West Bengal in the
presence of :—

SEAL

.....
Signature

.....
(Signature and address of witness.)

Signed, sealed and delivered by the
transferee (s) in the presence of :—

SEAL

.....
(Signature and address of witness.)

.....
Signature

- (1)
- (2)
- (3)

N.B.—Any of the alternative descriptions [A], [B] and [C] should be retained according to the requirement of the individual case.

- [A] should be used when a single individual is the owner of the concern,
- [B] when several individuals are joint owners, *i. e.*, brothers inheriting the property from common ancestor, and
- [C] when several individuals have contracted to carry on business in partnership, *i. e.*, a firm.

FORM 1D

[See paragraph 10A]

Standard Form of Licence to be executed to enable private institutions to use the lands acquired on behalf of such institutions by local bodies.

THIS INDENTURE made the.....day of.....BETWEEN
THE District Board/Municipality of.....hereinafter called the

District Board/Municipality of the One Part and.....

 the members of the Managing Committee of.....

(hereinafter called the Managing Committee, which term shall include the said persons and such other persons as shall from time to time be appointed members of such Managing Committee) of the Other Part.

THIS Indenture WITNESSETH that the District Board/Municipality doth hereby grant to the Managing Committee exclusive leave and licence, until such licence shall be determined in manner hereinafter mentioned, to enter upon, occupy and use for the purpose of.....
 the land specified in the schedule hereto and delineated in the plan hereunto annexed subject to the conditions following, that is to say :—

(1) Save as the District Board/Municipality shall from time to time permit with the approval of the Government of West Bengal the said land shall be used by the Managing Committee solely for the purpose of.....

(2) The Managing Committee shall forthwith erect or cause to be erected the buildings of which signed plans and estimates are appended to this Indenture and shall complete the same in accordance therewith to the satisfaction of the..... by the day of.....

(3) The Managing Committee shall during the continuation of the licence hereby granted, pay or cause to be paid all rates and taxes and other outgoings which are new or may hereafter be charged, levied or imposed upon or in respect of the said premises by Government or any local authority whether the same be payable by owner or occupier.

(4) The Managing Committee shall keep and maintain the buildings and premises thereon in good repair and condition to the satisfaction of District Board/Municipality.

(5) No building shall at any time be erected on the said premises, nor any alteration or addition made to the existing or to any future buildings that may be erected on the premises without the previous consent in writing of the District Board/Municipality.

(6) Neither the Managing Committee nor any member thereof shall derive any pecuniary return or benefit from the use of the said land or any part thereof save for the purpose of the.....

(7) The Managing Committee shall not transfer or assign this licence or the benefit thereof or execute any instrument purporting to do so.

(8) The said.....shall be open to inspection at all reasonable times by any officer deputed by the Chairman of the District Board/Municipality and by the inspecting officer who may inspect institution of the same class.

(9) In the event of the land being at any time required for a purpose declared by the Government of West Bengal to be a public purpose then on giving to the Managing Committee six month's notice in writing and in the event of the breach, non-performance or non-observance of any of the foregoing conditions or if the said land at any time cease for a period of 12 consecutive months to be held and used or cease to be required for the purpose or purposes provided for in foregoing first clause then and in any such case without notice the District Board/Municipality shall, on the expiration of such notice or immediately, as the case may be, be entitled to revoke and determine the licence hereby granted and re-enter upon the said land or any part thereof in the name of the whole and thereupon the Managing Committee shall be bound to give to the District Board/Municipality or any officer authorised in this behalf quiet and peaceable possession of the said land and of all buildings erected thereon :

Provided that the Managing Committee shall be entitled to such compensation for all buildings erected upon the land as may be fixed by and in accordance with the estimate made by the..... Engineer of..... at the time of the determination of the said licence and not to exceed the cost of the said buildings, or the value thereof at the time of such determination whichever shall be less :

Provided always that in the case of any such breach, non-performance or non-observance of any of the said conditions, the omission by the District Board/Municipality thereupon to enforce the provisions of this clause shall not prejudice or alter his right to enforce such provisions thereafter in respect of any subsequent or continuing occasion.

(10) Upon any appointment of a person as member of the Managing Committee in the place of any of the parties hereto of the other part such person shall forthwith inform the District Board/Municipality in writing of his appointment and shall agree to observe and perform the said conditions and to be bound thereby as if he had been a party hereto and thereafter this licence shall continue in force as if such person had originally been a party to these presents and in case of failure of such person to make such agreement as aforesaid within one month after appointment he shall not be entitled to any benefit under this licence.

(11) In the event of any dispute or difference touching or concerning the subject-matter of this licence or any covenant clause or thing herein contained, such dispute of difference shall be referred to the said District Board/Municipality of..... whose opinion and decision shall be final in every case.

Schedule above referred to

All the piece or parcel of land situated in mauza..... jurisdiction list No....., P. S....., district..... containing an area of more or less.....acres comprising cadastral plots Nos.....

In witness whereof the said parties hereto have hereunto set and subscribed their hands and seals the day/month and year first above written.

Signed, sealed and delivered for and on behalf of the District Board/ Municipality by the Chairman and a member thereof in the presence of....

Signed, sealed and delivered by the Members of the Managing Committee of.....

.....
in the presence of.....

FORM 2

[See paragraph 13]

Form of Notification under Sec. 4, Act I of 1894, for use when a preliminary investigation is necessary

(To be used when land is required for any purpose other than a purpose of the Central Government)

Whereas it appears to the Governor that land in the district of.....
.....is likely to be needed for a public purpose, viz., for the construction of a line of railway, *from.....to....., notice is hereby given to all whom it may concern that in exercise of the powers conferred by Sec. 4 of the Land Acquisition Act, I of 1894, the Governor has authorised the Engineers of the..... for the time being engaged on this undertaking to enter upon and survey land, and do all other acts, required for the proper execution of their work provided for or specified in the said section.

The general route to be taken for the survey will be from..... to.....

FORM 2A

[See paragraph 13]

Form of Notification under Sec. 4 of the Land Acquisition Act, 1894, I of 1894 for use when a preliminary investigation is necessary.

(To be used when land is required for a purpose of the Central Government).

Whereas the functions of the Central Government under the Land Acquisition Act, 1894 (I of 1894), in relation to the acquisition of land for

*Or road, canal, etc., as the case may be.

the purposes of the Union have been entrusted to the State Government by notification No. 123/50 Judl., dated the 30th September, 1950, issued by the Government of India in the Ministry of Home Affairs under clause (1) of Article 258 of the Constitution of India ;

And whereas it appears to the Governor that land in the district of is likely to be needed for a public purpose, being a purpose of the Union, namely, for the construction of a line of railway, from to, notice is hereby given to all whom it may concern that in exercise of the powers conferred by Sec. 4 of Land Acquisition Act, 1894 (I of 1894), read with the said notification, the Governor has authorised the Engineers of the for the time being engaged on this undertaking to enter upon and survey land and do all other acts required for the proper execution of their works provided for or specified in the said section.

The general route to be taken for the survey will be from to

FORM 3

[See paragraph 19A (i)]

Form of Notification under Sec. 4, Act I of 1894, for land which can be specified

(To be used when land is required for any purpose other than a purpose of the Central Government).

Whereas it appears to the Governor that land is likely to be needed for a public purpose, not being a purpose of the Union, namely, for, in the village of jurisdiction list No. thana, pargana zilla, it is hereby notified that a piece of land comprising cadastral plots and measuring, more or less, acres, bounded on the (here specify the boundaries), is likely to be needed for the aforesaid public purpose at the public expense within the aforesaid village ;

This notification is made, under the provisions of Sec. 4 of Act I, of 1894. To all whom it may concern.

A plan of the land may be inspected in the office of the

In exercise of the powers conferred by the aforesaid section the Governor is pleased to authorize the officers for the time being engaged in the undertaking, with their servants and workmen, to enter upon and survey the land and do all other acts required or permitted by that section.

Any person interested in the above land, who has any objection to the acquisition thereof, may, within thirty days after the date on which public notice of the substance of this notification is given in the locality, file an objection in writing before the Collector.

Dated.....19....

Collector

FORM 3A

[See paragraph 19A (1)]

**From of notification under Sec. 4 of the Land Acquisition Act,
1894 (I of 1894), for land which can be specified**

*(To be used when land is required for a purpose of the
Central Government).*

Whereas the function of the Central Government under the Land Acquisition Act, 1894 (I of 1894), in relation to the acquisition of land for the purposes of the Union have been entrusted to the State Government by notification No. 20/1/55-Judl., dated 14th May, 1955, issued by the Government of India in the Ministry of Home Affairs under clause (1) of Article 258 of the Constitution of India ;

And whereas it appears to the Governor that land is likely to be needed for a public purpose being a purpose of the Union, namely, for.....
....., in the village of.....
jurisdiction list No....., thana....., pargana.....
zilla....., it is hereby notified that a piece of land comprising cadastral plots.....and measuring, more or less,.....acres, bounded on the (here specify the boundaries),.....
.....
is likely to be needed for the aforesaid public purpose at the public expense within the aforesaid village of.....,

Notes on Form 3—

Note 1.—All names of places in a draft notification should be entered in capital letters.

Note 2.—When land is needed for a Company for a work of public utility, the words “at the expense of the aforesaid Company” should be substituted for the words “at the public expense”.

Note 3.—When the cost is borne partly out of public revenues or the fund of a local authority the words “partly at the public expense/expense of (name of local authority) and partly at the expense of (name of the authority)” shall be substituted for the words “at the public expense”.

Note 4.—When cadastral plot numbers of the area to be acquired are given, boundaries need not be given,

This notification is made, under the provision of Sec. 4 of the Land Acquisition Act, 1894, read with the said notification, to all whom it may concern.

A plan of land may be inspected in the office of.....

In exercise of the powers conferred by the said section, read with the said notification, the Governor is pleased to authorise the officers for the time being engaged in the undertaking, with their servants and workmen, to enter upon and survey the land and do all other acts required or permitted by that section.

Any person interested in the above land, who has any objection to the acquisition thereof, may within thirty days after the date on which public notice of the substance of this notification is given in the locality, file an objection in writing before the Collector of.....

Dated.....19....

Collector.

FORM 5

[See paragraph 23]

Form of Declaration under Section 6, Act I of 1894*

(To be used when land is required for any purpose other than a purpose of the Central Government)

Whereas the Governor is satisfied that land is needed for a public purpose, not being a purpose of the Union, namely, for.....
in the village of.....jurisdiction list No.....
thana....., pargana....., zilla.....
it is hereby declared that a piece of land comprising cadastral plots.....
.....measuring, more or less,.....acres,
bounded on the (here specify the boundaries),.....
.....
is needed for the aforesaid public purpose at the public expense within the aforesaid village of..... ;

*Note 1.—All names of places in a draft declaration should be entered in capital letters.

Note 2.—When land is needed for a Company for a work of public utility, the words “at the expense of the aforesaid Company” should be substituted for the words “at the public expense”.

Note 3.—When cadastral plot numbers of the area to be acquired are given, boundaries need not be given,

The declaration is made, under the provisions of Section 6 of Act I of 1894, to all whom it may concern.

A plan of the land may be inspected in the office of the

Dated.....19....

Collector.

FORM 5A

[See paragraph 23]

Form of Declaration under Section of 6 of the Land Acquisition Act, 1894 (I of 1894)

*(To be used when land is required for a purpose of the
Central Government)*

Whereas the functions of the Central Government under the Land Acquisition Act, 1894 (I of 1894), in relation to the acquisition of land for the purposes of the Union have been entrusted to the State Government by notification No. 20/1/54-Judl., dated the 14th May, 1955, issued by the Government of India in the Ministry of Home Affairs under clause (1) of Article 258 of the Constitution of India ;

And whereas the Governor is satisfied that land is needed for a public purpose, being a purpose of the Union, namely for.....
in the village of....., jurisdiction list No.....
thana....., pargana.....
zilla.....it is hereby declared that a piece of land
comprising cadastral plots.....measuring, more or less.....
.....acres, bounded on the (here specify the boundaries),.....
.....
is needed for the aforesaid public purpose at the public expense within the aforesaid village of..... ;

This declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894 (I of 1894), read with the said notification, to all whom it may concern.

A plan of the land may be inspected in the office of the

Dated.....19....

Collector.

FORM 6

[See paragraphs 23 and 25]

**Form of Declaration under Section 6, Act I of 1894, and section 3,
Clause (1), Act XVIII of 1895****(To be used when land is required for any purpose other than a purpose of the
Central Government)*

Whereas the Governor is satisfied that land is needed for a public purpose,
not being a purpose of the Union, namely, for.....
in the village of....., jurisdiction list No.....
thana....., pargana....., zilla.....
it is hereby declared that a piece of land comprising cadastral plots.....
.....measuring, more or less,
.....acres, bounded on the (here specify the boundaries)
.....
is needed for the aforesaid public purpose at the public expense within the
aforesaid village of..... ;

Mines of coal, iron-stone, slate or other minerals lying under the land
or any particular portion of the land, except only such parts of the mines
and minerals as it may be necessary to dig or carry away, or use in
the construction of the work for the purpose of which the land is being
acquired, are not needed.

This declaration is made, under the provisions of Section 6, Act I of
1894, and section 3, clause (1), Act XVIII of 1885, to all whom it may concern.

A plan of the land may be inspected in the office of the.....

Dated.....19....

Collector.

*Note 1.—All names of places in a draft declaration should be entered in capital letters.

Note 2.—When land is needed for a company for a work of public utility, the words ‘.—
“at the expense of the aforesaid Company” should be substituted for the
words “at the public expense”.

Note 3.—When cadastral plot numbers of the area to be acquired are given, boundaries
need not be given.

FORM 7

[See paragraphs 40 and 47]

Schedule of lands in the										mile of the		from		to		in the district of			
No. of plot.	Name of vil- lage	No. of estate on the district roll and its name	Name of proprietor	Name of inter- mediate tenant with descrip- tion of his rights.	Name of lessee or raiyat, with des- cription of his rights.	Names of culti- vators and owners of houses, trees or crops.	Descrip- tion and quantity of land in acres and deci- mals.	Measure- ment of each plot.		Description of trees.				Description of particulars of houses, etc.				Description of standing crop.	Remarks.
								Area in square feet.	Area in acres and deci- mals	Kind	Number	Length	Girth	Description	Length	Breadth	Height		
1	2	3	4	5	6	7	8	9	10.	11	12	13	14	15	16	17	18	19	20

Note 1.—When the land is taken for a railway, a separate schedule in this form is to be prepared for each class of land—A, B, C or D.

Note 2.—If the number of trees of separate kinds is large and the length and girth of all the trees cannot conveniently be entered, the trees of each kind should be divided into different classes according to their size, and the class to which the trees belong should be entered in column 13, the mode of classification being shown in the column of remarks.

Dated.....19....

Collector.

FORM 8

[See paragraph 53]

**Form of General Notice to be published under clauses 1 and 2, Sec. 9,
Act I of 1894, for land to be taken up**

Notice is hereby given that.....acres, more or less, of land situate in or near the village of..... described below, and recently marked out and measured, are about to be taken by Government for a [*here specify the purpose*], under Act I of 1894, in accordance with a declaration No....., dated.....published in the Government Gazette of the.....All persons interested in this land are hereby called upon to appear personally or by agent on the [*enter a date not less than fifteen days from the date of publication of the notice*] at the office of....., at....., to state the nature of their interest in the land, and the amount and particulars of their claims to compensation for the same, and their objections, if any, to the measurements made under Sec. 8 of the Act.

*Boundaries

North—
South—
East—
West—

Dated.....19....

.....
Collector.

FORM 9

[See Paragraph 53]

Form of Special Notice to be issued under clauses 3 and 4, Sec. 9, Act I of 1894, to occupiers of the land to be taken up and other persons known or believed to be interested in it, or to be entitled to act for persons so interested.

Notice is hereby given that.....acres, more or less, of land situate in or near the village of.....described below and recently marked out and measured, are about to be taken by

* Or in areas cadastrally surveyed serial numbers of the settlement field in which the land is comprised,

Government for a [*here specify the purpose*], under Act I of 1894, in accordance with a declaration No., dated published in the Government Gazette of the If you have any interest in this land or are entitled to act for persons so interested, you are hereby called upon to appear personally by agent on the [*enter a date not less than fifteen days from the date of the publication of the notice*] at the office of at, to state the nature of such interest in the land, and the amount and particulars of any claim you may wish to prefer for the same, and your objections, if any, to the measurements made under Sec. 8 of the Act.

FORM 10

[See Paragraph 53]

Form of Requisition under Sec. 10, Act I of 1894, to be added when necessary to Notice in Form 9

You are hereby required to *make or deliver* to the undersigned at (*here specify the place*) on (*here specify the date not earlier than 15 days from the date of requisition*) a statement containing, so far as may be practicable, the name of every person possessing any interest in the land, or any part thereof, referred to in the notice of served on you, as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the settlement.

Dated 19....

.....
Collector.

APPENDIX

ADAPTATION OF LAWS ORDERS 1950

Issued Under

The Constitution of India.

Although the scheduled Districts Act XVI of 1874 has been repealed, the Land Acquisition Act has been continued in force by virtue of the Government of India (Adaptation of Indian Laws) Order 1937. This was followed by the Indian Independence (Adaptation of Central Act and Ordinances) Order 1948 (Published in Gazette of India, Extraordinary, dated 23rd March 1948, pp. 431—432). This again was followed by Adaptation of Laws Order 1950 published in the Gazette of India Extraordinary dated 26th January, 1950, issued under Article 372 of the Constitution of India. The said order provides inter-alia for continuation of said Act subject to necessary modifications and as described in the schedules given below :—

SCHEDULE I

The Land Acquisition Act 1894 (1 of 1894)

Throughout the Act except in section 43 for “Provincial Government” substitute “appropriate Government”.

Section 3.—In clause (e) after “Act of Parliament” insert “of the United Kingdom” and after clause (3) add—“(ee) the expression ‘appropriate Government’ means in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, State Government.”

Section 54.—For “His Majesty in Council” substitute “The Supreme Court.”

The Land Acquisition (Mines) Act 1885 (XVIII of 1885)

Throughout the Act, except in Sec. 1 for “Provincial Government” substitute “appropriate Government.”

Section 1.—For “any other Provincial Government” substitute the “Government of any other Part A State or of a Part C State.”

Section 16.—In clause (b) for “the Provinces” substitute “Part A States and Part C States,” after “Act of Parliament” insert “of the United Kingdom” and after clause (b) add—

“(c) ‘appropriate Government’ means in relation to acquisition of land for the purposes of the Union, the Central Government and in relation to acquisition of land for any other purpose, the State Government.”

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CORRIGENDA

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44	(g)	178 I.C.	714	187 I.C.	714
46	(y)	40 W.N.	735	4 O.W.N.	735
64	(x)	B.	699	47 B	699
64	(z)	431 A.I.		43 I.A.	1
70	(z)	18 P.W.R.	19	18 P.W.R.	1919
77	(m)	A.I.R. 1955 Bom.	810	A.I.R. 1955 S.C.	810
79	(g)	A.I.R. 1945		A.I.R. 1945 Bom.	348
91	(h)	1945 Mad.	394	A.I.R. 1945 Mad.	394
91	(k)	A.I.R. 1959 S.C.	222	A.I.R. 1950 S.C.	222
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134	(a)	A.I.R. 1978 S.C.	1228	A.I.R. 1968 S.C.	1223
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449	(c)	107 I.C. 738 : A.I.R.		108 I.C. 263 :	
		1928 Cal. 402		1928 A.I.R. Cal.	475
478	(b)	61 C.W.N.	499	71 C.W.N.	499
517 line 1 (heading)		"Company concerned may appeal" read, "Company concerned may appear".			
1079 in footnote (h)		A.I.R. 1966 Cal. 429 read A.I.R. 1965 Cal. 177 and see also A.I.R. 1966 Cal. 429.			

Please consult the Table of Cases always

ADDENDA

West Bengal Land Development and Planning Act XXI of 1948, S. 8, sub-sn. (2) is void :—In *Monoranjan Routh v. The State of West Bengal*, A. I. R. 1972 Cal. 487 (D. B.) it has been held that "Sub-Sn. (2) of s. 8 is violative of Art. 14 of the Constitution and is not saved by Art. 31B of the Constitution." The Act was included in the 9th Schedule of the Constitution by the Constitution Fourth Amendment Act on 27-4-1955 after S. 8(1) (b) was declared void in *Bela Banerjee's case*, A. I. R. 1954 S.C. Thus re-validating it. But sub-section (2) was enacted by Act 23 of 1955 on 21-9-1955 and which was not included in the 9th Schedule and so it is not protected, *Ramanlal v. State of Gujarat*, A. I. R. 1969 S. C. 168. So the solatium shall have to be paid, *Balammal v. Sate of Madras* A. I. R. 1968 S. C. 1425. The validity of S. 8 (1) (b) is still doubted in view of principles laid down in *Jeejeebhoy's case* A. I. R. 1965 S. C. 1096.

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THE END



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